

EXHIBIT

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USA V Henry Lewis, et al, 97-10052-MLW - Harry Melikian - 03/15/02

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IN THE UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA
EX REL LAURENCE SARLAD
Plaintiffs
vs
CIVIL ACTION
NO. 97-10052 MLW
HENRY R. LEWIS
HARRY MELIKIAN AND
VANTAGE TRAVEL SERVICE INC
Defendants
vs
AMERICAN TRAPSHOOTING
HALL OF FAME, ET AL
Third-Party Defendants

THE ORAL DEPOSITION OF HARRY MELIKIAN held pursuant to Notice, and the applicable provisions of the Federal Rules of Civil Procedure, before Jennifer Goguen, a Court Reporter and Notary Public in and for the Commonwealth of Massachusetts, at the offices of the United States Attorney, 1 Courthouse Way, Boston, Massachusetts, on Friday, March 15, 2002, commencing at 10:15 a.m.

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WITNESS
Harry Melikian
Examination by Mr. Levitt

| EXHIBITS | DESCRIPTION | PAGE |
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| Melikian No. 25 | Notice of Deposition | 1 |
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STIPULATIONS

IT IS HEREBY STIPULATED AND AGREED TO by and between the parties and their respective attorneys that all objections, except as to the form of the questions, shall be reserved until the time of trial that the filing of the deposition be waived and that the witness may read and sign the deposition without a Notary Public being present.

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- [1] PROCEEDINGS
 [2] (10:15 a.m.)
 [3] MR. LEVITT: This is a continuation of a [4] deposition. Why don't we reswear the witness, if you [5] would?
 [6] HARRY MELIKIAN, having been sworn by a [7] Notary Public to tell the truth, the whole truth and [8] nothing but the truth, testified upon his oath as [9] follows:
 [10] MR. LeCLAIR: Technically, Peter, I think it's a [11] deposition ordered by the judge, as opposed to a [12] continuation of a deposition.
 [13] MR. LEVITT: Okay. Well, I was going to, on the [14] exhibits, just continue by number.
 [15] MR. LeCLAIR: I have no problem--
 [16] MR. LEVITT: Okay--
 [17] MR. LeCLAIR: --with how they're numbered.
 [18] EXAMINATION BY MR. LEVITT:
 [19] Q Mr.Melikian, in the past, you've told me that you're [20] on some medications. Are you, have you taken any [21] medication today?
 [22] A Yes.
 [23] Q And what have you taken?
 [24] A I've taken Lipitore and Allopurinol.
 [25] Q Do either of those medications affect your ability to

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- [1] remember things?
 [2] A No.
 [3] Q Do they affect your ability to think clearly?
 [4] A Not to my knowledge, no.
 [5] Q If at any point you need a break, which you've asked
 [6] for in the past, please, just let me know?
 [7] A Thank you.
 [8] MR. LEVITT: I'm going to mark this. It will be [9] Exhibit No. 25, continuing from the prior depositions.
 [10] (The document referred to was [11] marked for identification as [12] Melikian Exhibit No. 25.)
 [13] BY MR. LEVITT:
 [14] Q Mr.Melikian, I'm going to show you what's been marked [15] as Exhibit No. 25. It's a Notice of Deposition for [16] Harry Melikian; have you seen this before?
 [17] A I have not.
 [18] Q Would you turn to the fifth page of that deposition [19] notice, the sixth page, actually; have you seen that [20] list entitled Exhibit B?
 [21] A I have not.
 [22] MR. LEVITT: I'm going to read this into the [23] record. "The documents which the deponent will be [24] asked to produce for inspection and copying at the time [25] of the deposition are as follows:

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- [1] "Number one, all documents from 1991 to the [2] present showing Vantage's actual out-of-pocket costs [3] for any and all programs addressed in the two [4] spreadsheets provided to all parties by Vantage's [5] counsel by letter dated January 10, 2002."
 [6] BY MR. LEVITT:
 [7] Q Did you bring those documents with you, Mr.Melikian?
 [8] MR. LeCLAIR: Peter, those documents have already [9] been produced to the extent they exist.
 [10] BY MR. LEVITT:
 [11] Q Mr.Melikian, did you bring those documents with you [12] today?
 [13] A Those documents have been produced, to the extent that [14] they exist.
 [15] Q I take it your answer is no?
 [16] A That's my answer.
 [17] Q Well, did you bring them with you today?
 [18] A I don't have them, personally, with me today.
 [19] MR. LEVITT: "Number two, all documents from 1991 [20] to the present showing Vantage's profit for any and all [21] programs addressed in the two spreadsheets provided to [22] all parties by Vantage's counsel by letter dated [23] January 10, 2002."
 [24] BY MR. LEVITT:
 [25] Q Did you bring those documents with you here today?

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- [1] A No.
 [2] MR. LEVITT: "Number three, all documents from [3] 1991 to the present showing Vantage's profit mark up [4] percentage for any and all programs addressed in the [5] two spreadsheets provided to all parties by Vantage's [6] counsel by letter dated January 10, 2002."
 [7] BY MR. LEVITT:
 [8] Q Did you bring those documents with you here today?
 [9] A No.
 [10] MR. LEVITT: "Number four, from 1991 to the [11] present, all Vantage Handicap Reports or equivalent [12] documents of other names. Two examples of such Vantage [13] Handicap Reports produced by the United States to [14] Vantage, but not by Vantage to the United States are [15] attached hereto. The United States presently has [16] Handicap Reports only for 1996."
 [17] BY MR. LEVITT:
 [18] Q Did you bring any of those documents with you here [19] today?
 [20] A No.
 [21] MR. LeCLAIR: I'd note for the record, Peter, that [22] the court didn't authorize you to engage in further [23] document production. To the extent the documents are [24] requested and exist, they've already been produced.
 [25] BY MR. LEVITT:

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- [1] Q Did your counsel advise you that these documents had [2] been requested to be brought here today?
- [3] A No.
- [4] Q Did your counsel tell you anything about any documents [5] which were requested as part of the deposition notice?
- [6] MR. LeCLAIR: Objection. I'm instructing the [7] witness not to answer. That's privileged [8] communications, Peter.
- [9] MR. LEVITT: Do you think that the conveying of [10] that information is privileged?
- [11] MR. LeCLAIR: I think any communication with my [12] client is privileged.
- [13] BY MR. LEVITT:
- [14] Q Do you know what a Vantage Handicap Report is?
- [15] A I know what a handicap type report is. I don't know [16] what the actual terminology is, handicap report.
- [17] Q Okay. Well, if you turn the page on Exhibit No. 25, [18] and this is Bates stamped DOJ18999, it says Handicap [19] Report, Fred Chandler; do you recognize that document?
- [20] A No.
- [21] Q When you say that you know the term "handicap report," [22] what do you know that to be?
- [23] A No. I said I know terminology of a handicap report, [24] but not in this format.
- [25] Q Okay. What, what do you know the terminology of

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- [1] handicap report to be?
- [2] A We have a report that would be called a T & O Report.
- [3] Q What's a T & O Report?
- [4] A It would show, by individual, estimated and projected [5] amounts of mail, price, cost and expected cost and [6] expected gross margin.
- [7] Q And are T & O Reports kept by Vantage for individual [8] sales people?
- [9] A I don't know what you mean by the word "kept."
- [10] Q Does someone at Vantage produce these T & O Reports?
- [11] A Yeah, they're produced.
- [12] Q Who are they produced by?
- [13] A They would be produced by the Finance Department.
- [14] Q And you're the chief financial officer?
- [15] A Of the corporation, yes.
- [16] Q Who, in the Finance Department, currently produces the [17] T & O Reports?
- [18] A I believe it's Kelly Wade.
- [19] Q How long has she been producing the T & O reports, [20] approximately?
- [21] A I'm, I'm going to say a little over a year perhaps.
- [22] Q Who produced them prior to Kelly Wade?
- [23] A Whoever her predecessor was in that role. They were [24] produced by a myriad of individuals because there was [25] no one person that was assigned, so whoever was in that

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- [1] role or a comparable role would have done it.
- [2] Q And when you say "that role," is that defined by title?
- [3] A Not necessarily. It's, basically, by function, not [4] necessarily by title.
- [5] Q What is her title, Kelly Wade?
- [6] A I really honestly don't know. I think she, I believe [7] her title is accounting manager of that group, but I'm [8] not certain.
- [9] Q Okay. When you say the role is performed according to [10] function--
- [11] A Um-hum--
- [12] Q --is there a description you can give to that function [13] or a name you can give to that function?
- [14] A Well, currently, it would be the person responsible for [15] the day-to-day reporting of the financials, financial [16] information. They'd be responsible for Response [17] Analysis Reports, as you know about, billings, [18] collections, that kind of thing, so I would, I would [19] call it an accounting manager. I don't know what her [20] official title is, but that's the function she [21] performs.
- [22] Q So whoever, the same person who does the Response [23] Analysis Reports does the T & O Reports?
- [24] A No, that's not what I said. She'd be responsible for [25] the issuance of the Response Analysis Reports. She'd

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- [1] have people that worked for her to do those.
- [2] Q Okay. Who else can you recall that has been [3] responsible for T & O Reports over the years?
- [4] A Again, definition of "responsible." Responsible for [5] preparing them? I don't know what you mean.
- [6] Q Well, you said, well, who had the equivalent position [7] of Kelly Wade with respect to T & O Reports?
- [8] A Prior to Kelly, it would have been a fellow by the name [9] of Jack Muller.
- [10] (Pause.)
- [11] I, I think, and I don't want to guess, there would [12] probably have been a person by the name of Kim [13] Sztotfried who would have probably done it before Jack, [14] K-I-M S-Z-O-T-F-R-I-E-D.
- [15] Q Can you remember anybody else?
- [16] A Preparing them or -- I'm not sure--
- [17] Q Yes. Let me ask you.
- [18] A Yeah.
- [19] Q With respect to Kelly Wade, Jack Muller, Kim Sztotfried, [20] did they prepare the T & O Reports or they were, or [21] were they responsible for the preparation?
- [22] A They were responsible for compiling the information to [23] present the form, the report to distribute, so they [24] weren't, they were not responsible for the actual [25] preparation per se, the actual data.

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- [1] Q Who would be responsible for the actual data?
- [2] A That would come from Sales Administration, normally.
- [3] Q And who would it come from in Sales Administration [4] currently?
- [5] A A fellow by, probably by the name of Matt Kaiser.
- [6] Q Could you spell the last name?
- [7] A K-A-I-S-E-R.
- [8] Q Okay.
- [9] A And, there's only two people, so the other one would [10] have to be Kerry, with a K, Rawdon, R-A-W-D-O-N.
- [11] Q And can you recall who the predecessors were to [12] Mr. Kaiser and Mr. Rawdon?
- [13] A It's Ms. Rawdon.
- [14] Q Ms. Rawdon.
- [15] A Well, they've been there for a little while. I mean, [16] there's been so many people. They've been there for, [17] you know, for the last several years anyways.
- [18] Q Can you not recall?
- [19] A Well, there were, there were other people. I mean, I [20] mean, I don't know whether they prepared them or not. [21] There were other people that were administrators, but I [22] don't know whether they prepared them or not.
- [23] Q The T & O Reports, did those show the actual results of [24] the program?
- [25] A No.

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- [1] Q They just showed projections, estimates?
- [2] A Yes.
- [3] Q How were the -- strike that. Was there any document [4] that was used to track the actual results?
- [5] A Yes.
- [6] Q What was that?
- [7] A They would, the Accounting Department would, put [8] together a cost sheet, or I don't know what the [9] terminology that they use nowadays. They'd have a [10] worksheet for each program, and it would show what the [11] actual revenues were, which was as per the Response [12] Analysis Report, which would show the revenues. That [13] would show the collections, and then there would be a [14] cost sheet.
- [15] I don't know if they call it cost ledger sheet. I [16] don't know. They had some kind of a system where they [17] would then compile the actual costs, and through a [18] combination of the Response Analysis Report and the [19] cost ledger sheet, they would determine how much profit [20] was made.
- [21] Q And it sounds to me, I want to make sure I'm right, [22] that what you're saying is that there was, the [23] Accounting Department would take data from several [24] different sources and put it onto one, one document; is [25] that correct?

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- [1] A Well, yes and no. The data from the Response Analysis [2] Report would be, roughly, 75 or 80 percent of what they [3] needed to determine the profit and loss, and the other [4] 25 or 30 percent would be determined by reference to [5] the cost, I guess, I don't know, cost journals, cost [6] ledger sheets, whatever they were, and those are where [7] all the actual costs went in.
- [8] And then they would then take that number and [9] compare it against the revenues that were chargeable to [10] the group based upon a response analysis sheet, and [11] they would determine if there was a gain or loss on [12] that program.
- [13] Q And would they produce a document that would show this [14] that could be produced to people at Vantage who want to [15] know how the program, whether the programs were [16] successful or not?
- [17] A Yeah. There was a summary, well, I don't know if it's [18] an actual document per se. They would have a line [19] item, and they'd have Job No. 1, revenues, cost, [20] profit, loss, and it would be in a summary format, and [21] it would be just taking the information, again, from [22] the, from the Response Analysis Report, and it was a [23] summary that would be used.
- [24] Q Okay. And would this summary show, for example, for a [25] particular program, what Vantage's cost was, what the

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- [1] revenue was from the program and what Vantage's profit [2] was?
- [3] A Yes.
- [4] Q And were these done for every program?
- [5] A That, I can't say. I know they were done for most [6] programs. On some of the small programs, they wouldn't [7] do it. It wouldn't, it wouldn't be time beneficial to [8] do it. They'd lump them together.
- [9] Q And what was done with this information once it was put [10] together -- let me be more specific.
- [11] A Um-hum.
- [12] Q Was this information then distributed to certain people [13] at Vantage?
- [14] A There would be a, they would review them, I guess, [15] monthly or quarterly to see how the groups were doing [16] and how we were doing with those specific groups.
- [17] Q And who would review these?
- [18] A Well, most of the time would be the -- when you say [19] "review," in what, in what scope and what detail?
- [20] Q Well, I was responding to your statement that they [21] would be reviewed. Maybe, why don't, why don't we do [22] it this way. If you could tell me if there's different [23] levels of review that are done of these documents -- [24] let me, let me step back.
- [25] Do these reports have a name that we can refer to?

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[1] A Well, they weren't really actual reports. I guess you [2] could call them, they were, they were summaries. They [3] were like program summaries, I guess you could call [4] them.

[5] Q Okay.

[6] A Not - what do they call them? I wouldn't call them [7] official reports. They were report summaries, you [8] could call them, program report summaries.

[9] Q And did they have an identifying name on them; did they [10] say something, did they say program report summaries?

[11] A It would just be a sheet. It would be, it would be [12] like an Excel spreadsheet which would be then, you [13] could discuss them and say, I would look at them from [14] a, from a global perspective.

[15] If we did ten jobs that month, and the jobs looked [16] okay, then I'd say, when I say okay, did we make what [17] we thought we'd make, a little bit less, little bit [18] more, what were the reasons, so on and so forth, and [19] then they'd go into a detail.

[20] Then I say "detail," then they'd meet with other [21] people, sales people, to determine, if they thought [22] they were going to make 25 cents, this is just [23] conversation, and they ended up making 30 cents or they [24] ended up making 10 cents, they'd have to know that. [25] That's what the meeting was all about, and it was just

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[1] as part of that. It's the same thing as response [2] analysis. It was the, it was just an extension of the [3] Response Analysis Report.

[4] Q The, why don't we take this step by step. Who at the, [5] who, in the Accounting Department, was, let's start [6] with, responsible for these program report summaries; [7] who is, who currently is responsible for them?

[8] A I want to say Kelly, but I'm not sure if she is or not.

[9] Q Your best recollection is that it's Kelly Wade?

[10] A Yes.

[11] Q And are there other individuals in the Accounting [12] Department that you know work on these program report [13] summaries, help prepare them?

[14] A I don't want to guess. My recollection would be, I [15] know that Kelly either does them or compiles them. I [16] would assume that she has a couple other people helping [17] her with them. There's three people in the Accounting [18] Department, so I'm assuming that they would be there.

[19] Q Who's in the Accounting Department?

[20] A A fellow by the name of Jean, French fellow, Jean, [21] J-E-A-N, Felix, and Kim Szotfried again, K-I-M S-

[22] Q Anybody else?

[23] A There's a person there that's the, he's the top finance [24] person in that group at this time. His name is Wil [25] Weddleton.

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[1] Q I didn't get the last name?

[2] A Wil Weddleton, W-E-D-D-L-E-T-O-N.

[3] Q Okay. How long has - strike that. Can you recall [4] other people from the Accounting Department who've left [5] Vantage?

[6] A Vantage? Which Vantage?

[7] Q Well, which Vantage are we talking about when you, you [8] said, you listed Kelly Wade-

[9] A That would be Vantage Financial.

[10] Q Okay. What other accounting people from Vantage [11] Financial can you recall that have left the company?

[12] A Well, we talked about Jack Muller, and then the person [13] that was there probably the longest was Frank Choiani

[14] (phonetic).

[15] Q Okay. Getting back to the program report summaries-

[16] A Um-hum-

[17] Q -you mentioned that there would be meetings where they [18] would be reviewed?

[19] A Um-hum.

[20] Q You have to say-

[21] A Yes, yes.

[22] Q Who would attend those meetings?

[23] A I thought I said that before, but, generally, the sales [24] people, sales administrative people, whoever was [25] running the division and the person in the Accounting

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[1] Department who was presenting the data and, [2] occasionally, myself if there were some major issues. [3] If there's not, I wouldn't be there. And Mary Lou, who [4] would be in Production?

[5] Q Mary Lou?

[6] A That's correct.

[7] Q What about Mr. Lewis?

[8] A Sometimes yes, sometimes no. It's, it wasn't, it [9] wasn't an absolute guarantee or necessity that he be [10] there.

[11] Q Sometimes he attended, sometimes he didn't?

[12] A Yes.

[13] Q Just like you?

[14] A Yes.

[15] Q Would you, regardless of whether you attended the [16] meeting, get a copy of the, all the program report [17] summaries?

[18] A I'd get a draft.

[19] Q Draft?

[20] A Right. In other words, I'd be looking at what their, [21] what it looked like, let's say, if you had ten jobs, [22] and I'd look at them very quickly, and if they looked [23] like they're in line, then it wouldn't, I wouldn't [24] really take any more time with it.

[25] Q But you can get, you'd get a finished product or is it,

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[1] when you say "draft," do you mean in draft form, not [2] finished?

[3] A Well, yeah. We'd get, you'd get a finished product [4] once it was done, and then it was discussed, then we'd [5] get a finished product.

[6] Q So you would get a finished product?

[7] A I'd get a finished product.

[8] Q And is it fair to say you would eyeball them to see if [9] there's anything out of the ordinary?

[10] A Yeah. I indicated that before, that I would look at [11] them on a global basis. I would guess that, in a given [12] month, I'd spend an hour, the problem being is that [13] there was so much turnover there, you didn't know if [14] people were going to do things right or if there were [15] going to be mistakes or something was out of whack. At [16] least, I could, hopefully, help them out.

[17] Q And do you know if Hank Lewis also got copies of the [18] program report summaries?

[19] A Probably not.

[20] Q Do you know either way?

[21] A No, I don't.

[22] Q The meetings that you alluded to, were these on a [23] regular schedule, weekly, monthly?

[24] A They were supposed to be regularly scheduled monthly.

[25] Q Were they on a certain day?

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[1] A The answer to that is, again, they were supposed to be, [2] but it never occurred on a regular schedule.

[3] MR. LEVITT: Let me show you another document [4] which we'll mark as - you know, I think I did that [5] wrong. That, that one should be No. 24, and this one [6] should be No. 25. The first one, the deposition [7] notice, should have been No. 24.

[8] (The document previously marked for [9] identification as Melikian Exhibit [10] No. 25 was remarked as Melikian [11] Exhibit No. 24.)

[12] MR. LEVITT: Do you have your notes, Brian, from [13] the prior deposition?

[14] MR. LeCLAIR: I don't have them with me.

[15] MR. LEVITT: I think it's - why don't we, why [16] don't we take a moment?

[17] (Off the record, briefly.)

[18] MR. LEVITT: Back on the record.

[19] Let's mark this as Exhibit No. 25.

[20] (The document referred to was [21] marked for identification as [22] Melikian Exhibit No. 25.)

[23] BY MR. LEVITT:

[24] Q When you reviewed the program report summaries, what [25] were you reviewing them for?

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[1] A Well, we would look at them to ensure that, if we [2] thought we were going to make 25 cents a unit, 30 cents [3] a unit, that they actually did, just wanted to make [4] certain that they were not doing the programs for [5] nothing. When I say "nothing," that they were making a [6] profit on every program.

[7] Q So, in order to determine that, what would you look at [8] on the program report summaries; were there certain [9] columns that you would look at?

[10] A Several. Just look at the revenues and the cost, and, [11] and then you take the units, and if there was a [12] reasonable relationship between profit, the gross [13] margin and the units, then we were in line, within [14] reason.

[15] Q Okay. When you say you look at the units, what do you [16] mean by that?

[17] A How many of the product were shipped.

[18] Q So there'd be a column that shows how many units of the [19] product were shipped; is that correct?

[20] A No.

[21] Q Okay. Maybe you could explain. I'm trying to get a [22] picture of what this looks like, and I'm--

[23] A It's, it's really, okay, it's not anything that's [24] formal, so I want to just make sure that we're clear. [25] It's a summary. It's like an Excel summary, and what

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[1] it would do is, it would show, you look for Response [2] Analysis Report to determine how much your, revenue [3] you'd be picking up, based upon units.

[4] You would have then a cost summary sheet, and [5] you'd see the units on the Response Analysis Report, [6] and you'd see the revenue on the Response Analysis [7] Report, and then the cost sheets or cost ledgers would [8] how you the cost, and you could very quickly, on an [9] eyeball basis, without a lot of detailed work, see [10] whether it came in within reasonable expectations.

[11] Q But this summary, program report summary, would put all [12] that information together in one place; is that right?

[13] A Yeah, it would - well, it's, again, I'm using, I'm [14] using my terminology. It's not called, that's my [15] terminology.

[16] Q I understand.

[17] A Okay.

[18] Q We're, we're calling it the program report summary--

[19] A Summary, right. It would be kind of like, again, on an [20] Excel spreadsheet that we would use for discussion [21] purposes that would be brought to me to look at on a [22] top side basis, does this make sense, yes or no, go.

[23] Q And could you just tell me each list item that's on [24] this program report summary?

[25] A Okay. It would show that we had budgeted or expected,

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[1] forecast, whatever word you want to use, "x" number of [2] units to be mailed, "x" number of revenues, I don't [3] even know for sure if it's revenues, but it would show [4] "x" number of units to be mailed, "x" number of margin [5] that we thought we'd recognize and the per unit margin [6] that we thought we'd recognize. That was expectations.

[7] And then it would show what really happened, you know, [8] at that point, up to that point in time.

[9] Q Okay. And when you say it would show the margin, would [10] it show the total margin or would it show the [11] percentage margin on each unit?

[12] A Well, it would show that there was, assume, [13] 10,000 units, and a dollar apiece, it would have been [14] \$10,000 revenue and, let's say, \$5,000 or \$6,000 in [15] costs. Expected profit would be \$4,000.

[16] And the 10,000 units, doesn't mean 10,000 were [17] mailed. That's what was expected. It could have been [18] 9,200; it could have been, 10,006. It would show the [19] revenue based on the actual number of units shipped, [20] and it would show costs on the actual number of units [21] shipped, and it would show the gross margin on the [22] actual number of units shipped, and then it would show [23] the gross profit per unit.

[24] Q So, it would show, both, basically, the information [25] from the T & O Report, the expected--

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[1] A Um-hum--

[2] Q --costs, revenue and profit--

[3] A Um-hum--

[4] Q --and then it would also show what actually happened?

[5] A That's correct.

[6] Q The actual cost, actual profit, actual revenue?

[7] A Um-hum.

[8] Q You have to say yes or--

[9] A Yes.

[10] Q Okay. Let me show you what's been marked as Exhibit [11] No. 25. This is a document entitled Vantage Contract [12] Summary Combined; do you recognize that document?

[13] A Yes, I do.

[14] Q What do you recognize that to be?

[15] A This is a summary of, of jobs that we furnished [16] information regarding payments made to Vantage, program [17] receipts and agreed charges to the group, and there's a [18] column that says Vantage Costs Recovered.

[19] Q Do you know--

[20] A Can't, can't read the blacked out sections.

[21] Q The blacked out section under Program Number, if you [22] look very closely, you can, you can see the program [23] numbers?

[24] A Okay.

[25] Q The blacked out section on the Vantage Costs Recovered

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[1] side doesn't say anything?

[2] A Okay.

[3] Q The, do you know who prepared this?

[4] A It would have been Kelly and Kim.

[5] Q Kelly Wade and Kim--

[6] A Szoftfried--

[7] Q --Szoftfried. Were you at all involved in preparing [8] this?

[9] A I asked them to in, I asked them to obtain the numbers [10] from the Response Analysis Reports and insert them on [11] the schedule.

[12] Q When you say "the numbers"--

[13] A The amounts.

[14] Q Okay.

[15] A Of the accounts--

[16] Q You're referring to the columns under Payments to [17] Vantage, Program Receipts and Agreed Contract Charges?

[18] A Yes.

[19] Q And you asked them to prepare those from the [20] Response Analysis Reports; is that correct?

[21] A Yes.

[22] Q And who prepared the section entitled Vantage Costs [23] Recovered?

[24] A In other words, who answered yes or no?

[25] Q Correct.

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[1] A I was responsible for that.

[2] Q And--

[3] A In consultation with the other two individuals.

[4] Q Okay. What documents did you look at to make that [5] determination, if any?

[6] A Well, most of them were pretty much, I don't want to [7] use the word "automatic," but probably much, most of [8] them were pretty simple because if you looked at the, [9] if the payments to Vantage, the logic I used is if the [10] payments to Vantage equal the agreed contract charges, [11] then absent something that was totally catastrophic, we [12] made money.

[13] Q Let's, let's talk about the ones where that's not the [14] case--

[15] A Okay--

[16] Q --where the, for example, the amateur trap shooting?

[17] A Okay.

[18] Q Where the agreed contract charges are \$58,000 and [19] change and the payments to Vantage are \$36,000, what [20] did you do to determine that the answer on the [21] question, Vantage Costs Recovered, should be yes?

[22] A I believe I looked at those two together, and I looked [23] at those in the context that the payments that were [24] made to Vantage were \$61,766, and because they were [25] broken out, I gave you what was, I think, they gave you

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[1] Q Were there any documents from which you could have
[2] obtained that information?
[3] A Yeah. In many cases, probably, in many cases, yes. [4]
Some cases, I don't know if the documents are still [5]
available, but whatever was, if there's, if they were [6] available,
I could use them.
[7] Q What documents could you have obtained that
information [8] from?
[9] A The cost ledger sheets. I don't know if - that's what [10]
I'm calling them. I don't know if that's what, that's [11] not what,
I don't if that's what they are, but I used [12] to call the cost
ledger sheets.
[13] Q I'm going to show you a document before we, before
we [14] mark it--
[15] A Um-hum--
[16] Q --and ask you if this is what you're referring to?
[17] A Yes.
[18] MR. LEVITT: Okay. Why don't we mark this as [19] Exhibit
No. 26. This is an account ledger inquiry. [20] It's BANO0010.
[21] (The document referred to was [22] marked for
identification as [23] Melikian Exhibit No. 26.)
[24] BY MR. LEVITT:
[25] Q So, if you had wanted to determine the actual profit

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[1] margin on each of these programs, you could have done
[2] so by looking at documents like Exhibit No. 26? We'll [3] call
them cost ledger sheets.
[4] MR. LeCLAIR: Yes.
[5] A Cost ledger sheets, cost ledger inquiry, yes.
[6] Q But you didn't do that?
[7] A I looked at a couple of them. If they were, like I [8] said,
if they were close in terms of the relative [9] percentage of
payments to Vantage versus the agreed [10] contract charges.
[11] Q Now, the account ledger sheets, what do those show;
[12] what do those provide you in terms of information?
[13] (Pause.)
[14] Let me, let me rephrase the question. What do [15] they
show you relative to this issue of determining the [16] profit
margin?
[17] A They would show me, based upon my understanding
because [18] I don't get involved in the details, that depending
[19] upon the source of the entry, and the source of the [20]
amount, this would represent the costs that go into the [21]
prepaid production account per that job which then [22] would
be transferred out at the time the revenue was [23] recognized.
[24] Q Well, looking at Exhibit No. 26--
[25] A Um-hum--

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[1] Q --what program is this for?
[2] A I have no clue. I don't know what number 854 is.
[3] Q The number you're referring to, 854, is in the upper [4]
righthand corner?
[5] A I'm assuming that's the sub-ledger of the program [6]
number. That's an assumption. I don't, I think that's [7] what
that means.
[8] Q Well--
[9] A Up here. I mean, that's what--
[10] Q --when you went and did this--
[11] A Yeah. I believe that's, that's the code number for the
[12] job.
[13] Q Do you know that for a fact?
[14] A That's what I'm told. Okay? That's what I, that's [15]
what I based it upon, that it was a sub-ledger for the [16] job,
and because all the accounts were prepaid [17] production, or
4.1325, do you see that number?
[18] Q Yes.
[19] A And that would mean the sub-ledger would relate to
the [20] job. That's what sub-ledgers are for.
[21] Q Well, how do you determine who the nonprofit is here
[22] just to start?
[23] A Well, I'd have to go call up the response analysis. I [24]
do it? I mean, I don't even know how to call it up. [25] I'd ask
them to give me what Job 854 is under response

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[1] analysis, and then I'd cross-reference that to this [2] job.
[3] Q When you say "Job 854," does that correspond to a [4]
program number?
[5] A Yes.
[6] Q So it's a, 865, in your view, should correspond to the
[7] response analysis program number?
[8] A That's correct.
[9] Q And, in your view, that will, this cost ledger will [10]
show all the costs for that particular program?
[11] A Yes.
[12] Q And you reviewed the, the cost ledger report for [13]
Hofstra in connection with your preparation of that [14] Exhibit
No. 25?
[15] A I didn't, personally, review it. I asked someone what [16]
were the costs on Hofstra, and they gave me the [17]
information.
[18] Q Who did you ask?
[19] A I believe it was either Kelly or Kim.
[20] Q So you never looked at the account cost ledger?
[21] A No.
[22] Q Do you know that that's what they looked at?
[23] A Do I know personally, no. I have to make an
assumption [24] that that's what they would look at because
that's the [25] actual cost.

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- [1] Q Now, the cost account ledger does not show Vantage's [2] profit mark up; does it?
- [3] A The ledger that you're referring to here?
- [4] Q Exhibit No. 26.
- [5] A It does not show that, no.
- [6] Q But you've testified that program report summary does [7] show that?
- [8] A Well, it's a summary because they're taking the [9] information from the response analysis and the cost [10] ledger sheet, account ledger inquiry, A minus B equals [11] C.
- [12] Q Okay. I believe your testimony was that it was that [13] the program report summary showed the actual costs, the [14] actual profit margin and the actual revenue; is that [15] correct?
- [16] A It's a summary sheet. We're using that terminology, [17] but it's a summary sheet of what's on a Response [18] Analysis Report, what's been exculpated from the [19] account ledger inquiry sheet, and then they create a [20] report because A, minus B is equal to C, so it's a [21] derived number.
- [22] Q I understand that, but--
- [23] A Okay--
- [24] Q --I just want to make sure. Is my--
- [25] A Okay--

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- [1] Q --is my recollection correct--
- [2] A Okay, yes--
- [3] Q --that these, what we're calling program report [4] summaries--
- [5] A A summary, yes--
- [6] Q --right -- do you want to just call it a summary?
- [7] A A summary, let's call it a summary.
- [8] Q Okay.
- [9] A Program summary's fine.
- [10] Q Program summary--
- [11] A Um-hum--
- [12] Q --that the information that's contained on that [13] includes the actual costs of a program, the actual [14] revenue of a program and the actual profit to Vantage?
- [15] A That's a true statement.
- [16] Q And my question is, then, in preparing the Vantage [17] costs recovered section of the Vantage Contract Summary [18] Combined--
- [19] A Yes--
- [20] Q --why didn't you just look at the program summaries?
- [21] A It wasn't necessary, in most cases.
- [22] Q Well, you were trying to be as accurate as possible; [23] were you not?
- [24] A I wasn't trying to be accurate. I was accurate.
- [25] Q And you did that from your understanding of what the

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- [1] profit margin typically is?
- [2] A On any one -- I'll repeat it again. On any case where [3] the payments to Vantage equal the agreed contract [4] charges, it's a no brainer. Okay?
- [5] On any case where it was over and above a certain [6] percentage of payments vis-a-vis the contract charges, [7] to me, it was a no brainer.
- [8] Q What percentage?
- [9] A I said before it was anywhere between 60 to 65 percent. [10] If we were, if we're collecting 65 to 67, 68 percent of [11] my money, I, I said it was a pretty good solid deal. [12] If there were some that I thought may have been on the [13] line, so to speak, I would have asked either Kelly or [14] Kim to say what, what are the real costs?
- [15] Like Hofstra, I thought was pretty close, so I [16] asked them to look at it, and sure enough, it didn't [17] quite make it.
- [18] Q Now--
- [19] A On a spot check basis, they may have spot checked a [20] couple for me.
- [21] Q Do you know that, do you know who Carolyn Emigh is?
- [22] A Yes.
- [23] Q Who is she?
- [24] A She's an economist that does, has done work for us in [25] the past.

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- [1] Q Okay. When has she worked for, what work has she done [2] for Vantage in the past?
- [3] A She's worked on providing us some direction sometimes [4] in telling us, helped us draw up some agreements some [5] times with, with groups. She's also given us some kind [6] of advice with respect to the economic value of a [7] program, life time value of a program in terms of [8] determining what, what she would believe is, whether [9] the prospects of this group being on a long term basis, [10] being a viable group would be either good or not good [11] to pursue.
- [12] Q And I--
- [13] A Nothing of an extensive nature though.
- [14] Q Do you know that she was, that she testified in this [15] case?
- [16] A Yes, I do.
- [17] Q Okay. Do you know that she was retained by Vantage in [18] connection with this case?
- [19] A Well, she was retained, I guess, at my request through [20] Seth Perlman's office.
- [21] Q Other than her involvement in this case--
- [22] A Um-hum--
- [23] Q --how long has she been doing work for Vantage?
- [24] MR. LeCLAIR: Peter, I think we're really going [25] quite astray from the specific subject matter that the

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- [1] court allowed this deposition to go on for.
- [2] MR. LEVITT: Okay. Well, if he can answer this [3] one question, we'll get back to—
- [4] THE WITNESS: Please, repeat the question.
- [5] BY MR. LEVITT:
- [6] Q The question was, other than with respect to her [7] engagement in this matter, how long has she been doing [8] work for Vantage?
- [9] A On and off for probably, I don't know, four, five, six [10] years.
- [11] Q Are you aware that Ms. Emigh used this Vantage Contract [12] Summary Combined, Exhibit No. 25, in connection with [13] her expert testimony in this case?
- [14] A Yes, I am.
- [15] Q And when you prepared the Vantage Costs Recovered [16] section, did you know that Ms. Emigh would be using [17] this document in connection with her testimony in this [18] case?
- [19] A I knew she'd be using the document. I didn't know in [20] what connection she would be using it.
- [21] (Pause.)
- [22] MR. LEVITT: I want to be clear about something, [23] so I'm going to ask this. It may be that we've covered [24] it.
- [25] BY MR. LEVITT:

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- [1] Q If you had wanted to, or if you had chosen to, in [2] answering the Vantage Costs Recovered section, could [3] you have looked at the program report summaries to [4] obtain Vantage's actual cost and Vantage's actual [5] profit?
- [6] MR. LeCLAIR: All programs or any particular one?
- [7] MR. LEVITT: For all programs.
- [8] A Not necessarily.
- [9] Q Okay. Why not?
- [10] A Because I can't tell you on some of the older ones if [11] they did that program summary. That's not a, that's [12] not something that was done many, many years ago. [13] That's a rather, when I say recent, I'm going to say we [14] just put that in place a few years back in terms of the [15] summary per se.
- [16] Q Well, let's start from there.
- [17] A Okay.
- [18] Q For the programs that go back as far as the existence [19] of the program report summaries, could you have, if [20] you'd chosen, looked at the program report summaries to [21] answer the Vantage Costs Recovered section, by actually [22] getting the actual costs of Vantage and the actual [23] profit?
- [24] A Could I have looked at the actual program summary? To [25] the extent that we had done those, and I can't tell you

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- [1] how far back, it's not a long time back, we didn't — [2] okay.
- [3] So to the extent that if they were available, and [4] if they were done, I could have used them, the answer's [5] yes.
- [6] Q Did you look to determine how far back you had the [7] program report summaries?
- [8] A Didn't make, didn't cross my mind once.
- [9] Q I take it your answer's no?
- [10] A Yes, the answer's no.
- [11] Q And you didn't ask anybody else to look for them?
- [12] A No, I did not.
- [13] Q Do you know if that's what Kelly Wade or Kim Szotfried [14] looked at when they answered your question about [15] Hofstra?
- [16] A Do not know what they looked at. I'm, I don't want to [17] guess. Don't know what they looked at.
- [18] Q You don't know what they looked at?
- [19] A No, I don't.
- [20] Q Could have been the program report summaries, could [21] have been the account ledger; you're not sure?
- [22] A More than likely, it was the account ledger, but I [23] don't want to guess.
- [24] Q Well—
- [25] A Just I don't, I don't know—

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- [1] Q—I'm only—
- [2] A I don't know the answer. I don't want to guess.
- [3] Q You shouldn't guess.
- [4] A No.
- [5] Q Sitting here today, do you know when, what year the [6] program report summaries started being used by Vantage?
- [7] A Let me see.
- [8] (Pause.)
- [9] I'm trying to base it on who was, who was head of [10] the group at that time. I want to, I want to say it [11] was sometime in '97 or, late '97 or early '98. Wait a [12] minute.
- [13] (Pause.)
- [14] I would say it would have been sometime in late [15] '97 into 1998, mid to late 1997, as, as I would refer [16] to a program summary per se.
- [17] Q Do you know how those program report summaries came [18] about, whose idea they were, it was to start producing [19] them?
- [20] A Yes. Essentially, mine and Mr. Lewis'.
- [21] Q What was the reasoning behind that?
- [22] A Well, it would, didn't make sense to sit there and go [23] through a stack of Response Analysis Reports, pages and [24] pages and pages of documentation, when I say "pages," [25] one program could be four or five pages of donations

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- [1] and all this information, and the effort was then made [2] to try to put it on one piece of paper so that you [3] could look at it without having to go through fifty [4] pieces of paper.
- [5] MR. LEVITT: Let me show you a document I'll have [6] marked as Exhibit No. 27.
- [7] (The document referred to was [8] marked for identification as [9] Melikian Exhibit No. 27.)
- [10] BY MR. LEVITT:
- [11] Q And this is entitled Handicap Report, Fred Chandler.
- [12] It's DOJ18999 and it's for year 1996. Would you take a [13] look at that document, please? And the date in the [14] lefthand corner is June 12, 1996.
- [15] (Pause while witness reviews document.)
- [16] A Yes, I see it.
- [17] Q Have you had a chance to look at that document?
- [18] A Yes, I have.
- [19] Q Okay. Do you know who Fred Chandler is?
- [20] A Yes, I do.
- [21] Q Who is he?
- [22] A He's a sales person.
- [23] Q Is he a sales person for Vantage Financial Services?
- [24] A Yes.
- [25] Q Have you seen this document before?

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- [1] A No, not like this.
- [2] Q When you say "not like this," what do you mean?
- [3] A Well, I don't, I've never heard of a Handicap Report in [4] this division unless it's a, it's a derived report from [5] some other source data.
- [6] Q I'm sorry. I, I didn't catch your answer there?
- [7] A Unless it's a derived report from some other source [8] data.
- [9] Q Okay. And have you ever heard of any discussion of a [10] Handicap Report at Vantage?
- [11] A Under a different terminology that's intermingled with [12] the word T & O Report, which is what I testified [13] earlier.
- [14] Q Okay. Looking at the various columns here on this [15] report-
- [16] A Um-hum-
- [17] Q -is the format of this report familiar to you?
- [18] A Yes.
- [19] Q And what about it is familiar?
- [20] A Well, it has similarities to the T & O Report.
- [21] Q Are there, can you describe, generally, what's similar [22] about it?
- [23] A Some of the column headings look like they're similar.
- [24] Q Which ones?
- [25] A Well, similar, but not exact. Tentative Deals, Order

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- [1] Deals, Acquisition Deals, Tentative Mail Pieces, Order [2] Mail Pieces, Acquisition Mail. I've never used, seen [3] the terminology Average Costs; I've never seen Average [4] Profit; I've never seen Average Sales Price. Tentative [5] Revenue would be something that you would, it would be [6] familiar, Order Revenue, Acquisition Revenue. [7] Tentative Total Costs would be something that you could [8] superimpose on a T & O Report, Order Total Costs, [9] Acquisition Total Costs, Tentative Gross Margin, Order [10] Gross Margin, Acquisition Gross Margin, Total Gross [11] Margin.
- [12] Q All of that would be on a T & O Report as well?
- [13] A Well, similar. In other words, information or, in [14] other words, information that would be sim - when I [15] say "similar," it may be different wording, but they [16] would have the same effect.
- [17] Q What was your position at Vantage in 1996?
- [18] A Same as it is today.
- [19] Q What's that?
- [20] A Executive Vice President and Treasurer.
- [21] Q I'm sorry. I didn't hear you.
- [22] A Executive VP and Treasurer.
- [23] Q In 1996, what was the name of the division at Vantage [24] that did, that did direct mail fund raising?
- [25] A Well, the legal name was Vantage Financial Services,

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- [1] Inc.
- [2] Q In 1996, what was your involvement with Vantage [3] Financial Services?
- [4] MR. LeCLAIR: Peter, I think we are, once again, [5] getting quite afield of the specific thing the judge [6] permitted this deposition on.
- [7] MR. LEVITT: Yes. I actually, I don't agree. The [8] data that's in this report is very much related to the [9] Response Analysis Report, I mean, the, the summaries. [10] I'm trying to get at since now for why it is that [11] Mr. Melikian doesn't remember this document, so that's [12] what I'm exploring right now.
- [13] MR. LeCLAIR: Well, Peter, this document isn't [14] related to the ledger.
- [15] MR. LEVITT: Well, I think it is.
- [16] MR. LeCLAIR: That's your view.
- [17] MR. LEVITT: It sure is.
- [18] Can you answer that question, Mr. Melikian?
- [19] THE WITNESS: Do you want me to answer it?
- [20] MR. LeCLAIR: If you, if - do you know what the [21] pending question is?
- [22] THE WITNESS: No, I don't.
- [23] MR. LEVITT: Okay.
- [24] BY MR. LEVITT:
- [25] Q In 1996, what was your involvement with Vantage

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[1] Financial Services?
 [2] A Rather limited. We had an individual there that was, I [3] guess, I don't know, I guess we called him the [4] President of the division.
 [5] Q Who was that?
 [6] A That would have been, July, that would have been Dallas [7] Graves.
 [8] Q When you say your involvement was limited at that [9] time--
 [10] A Um-hum, um-hum--
 [11] Q --can you be more specific?
 [12] A I'm going to be very blunt. I was told to stay away.
 [13] Q The T & O Reports that you're familiar with, does that [14] have a, both, a section that has tentative orders and [15] actual orders?
 [16] A Yes.
 [17] Q And does it have, and by tentative, does that mean [18] estimated; is that the idea?
 [19] A No.
 [20] Q Okay. What does that "tentative" mean?
 [21] A All the, most of the information on the report is [22] estimated. The "tentative" means, is that it hasn't [23] reached the stage of a, of an agreement being signed.
 [24] Q Okay. And then the "orders" means what?
 [25] A That there's a signed contract and agreement in-house.

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[1] Q But it's still an estimate of actually how many [2] mailings will go out?
 [3] A That's correct.
 [4] Q Okay. There's nothing on the T & O Report that is the [5] actual historical record of what actually happened?
 [6] A I didn't say that.
 [7] Q Okay.
 [8] A Okay? What are you asking me?
 [9] Q Could -- I'll ask the question.
 [10] A Okay.
 [11] Q But that was my impression. Is there anything on the [12] T&O Report that is not an estimate, but is a [13] historical record of what actually happened on the [14] program?
 [15] A Only when the program is concluded, then, an input [16] would be made that if the estimated quantity on an [17] order was 300,000, I'm making it up, and it turned out [18] to be 283,000, that would be then inserted just for [19] that report, and then that would then vanish. Do you [20] want me to explain that to you?
 [21] Q I'd appreciate it.
 [22] A Okay. The only reason that the actuals are ever even [23] entered on the T & O Report is for the division [24] management to understand when an order is received, an [25] order which is a signed agreement, and the expectation

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[1] is for 300,000 pieces to be mailed, and it turns out to [2] be, again, make believe, 275,000, they need to know [3] that because all this report initially does is, it's [4] salesmen's bullshit because a salesman is going to put [5] on here what's going to make him or her look good.
 [6] And, therefore, when reality hits, the report then [7] becomes more meaningful, but often times, it's a source [8] of bull.
 [9] Q So, is it fair to say that the T & O Reports are [10] revised after a program is complete?
 [11] A No. Let me be clear again--
 [12] Q Okay--
 [13] A --with you. Okay?
 [14] Q Okay.
 [15] A There's no such thing as a historical T & O Report. [16] Okay? The report is done, and then when it's updated [17] for the next round, the old report is now totally [18] obsolete, and it's gone, doesn't make any sense.
 [19] Q When you say "it's updated for the next round," do you [20] mean--
 [21] A In other words, let's say it's done on a monthly basis, [22] so if it's in January, and it's showing "x," and then [23] it's updated in February to show "y," if at that time, [24] during that period of time, whatever is that update [25] shown, if that other order is still on before they get

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[1] a, they get a better handle on the actual number of [2] pieces, it's then inserted in that report.
 [3] For example, if the estimated quantity is 300,000, [4] and when the tape is received from the group, it shows [5] 268,000, if that item is still on that report as not [6] having been shipped, then the 300 will be replaced by [7] the actual quantity, when I say "actual," what the tape [8] quantity is--
 [9] Q The number of mailings?
 [10] A Number of pieces.
 [11] Q Number of pieces.
 [12] MR. LeCLAIR: Yes.
 [13] A But that doesn't, that doesn't always happen, and if [14] the report, if, if the window for that particular is, [15] that particular job is gone, then the T & O Report does [16] not get updated, so it is not a, I want to use the [17] term, it's not an absolute procedural issue.
 [18] And I told you why it's done, because it's [19] bullshit, because people come in and say, I'm getting [20] 300,000 units, and they end up with 250, so it's, it's, [21] at best, it's a guide for the sales manager or the head [22] of the division to see what the salesmen are doing. At [23] worst, you could tell who's working and who's not [24] working.
 [25] Q Does there ever come a time where the T & O Report is

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- [1] - strike that. After a program is actually done--
 [2] A Um-hum--
 [3] Q -is the T & O Report updated to show what actually [4] happened?
 [5] A No. Strike that. It depends whether the, the job is [6] done within the cycle of the next report. For example, [7] if your report is being done in, let's say, June, and [8] you're writing the report for June, okay, the only [9] thing that would be done to change, the only actual [10] number that would be in here would be more than, almost [11] invariably, would be the quantity. Nothing else, [12] everything else will stay the same. And these [13] summaries I referred to earlier would be the updating [14] mechanism, not the T & O Report.
 [15] The T & O Report is solely a, I guess I'd call it [16] a sales tool to just try to give an imp - I don't want [17] to use the word "impression," but to give an indication [18] on what the activity is in the marketplace for a [19] particular sales person for a particular product.
 [20] Q Is it your understanding that they are updated, to the [21] extent feasible, if it turns up that they're off, that [22] your sales person has, you know, either overestimated [23] or underestimated what's going to happen?
 [24] MR. LeCLAIR: Objection.
 [25] THE WITNESS: Repeat it again, so I can be clear.

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- [1] MR. LEVITT: Sure--
 [2] THE WITNESS: -what you're asking me.
 [3] BY MR. LEVITT:
 [4] Q Is it fair to say that the T & O Reports are updated [5] to, to try to more accurately reflect what actually [6] happened if it turns out that the sales person has [7] overestimated or underestimated?
 [8] A The answer's--
 [9] MR. LeCLAIR: Objection--
 [10] A -no.
 [11] Q Okay.
 [12] THE WITNESS: Sorry.
 [13] MR. LeCLAIR: That's okay.
 [14] A The answer's no.
 [15] Q I thought that you'd, I thought that you'd said that--
 [16] A I need to be clear--
 [17] Q -it was, that they, that, at least, an attempt was [18] made to, to do that?
 [19] A Right. Let me be clear.
 [20] Q Okay.
 [21] A The T & O Report is a snapshot at a point in time [22] which, as new information comes in, it's revised. The [23] old information now no longer is applicable, and the [24] report's no longer applicable so there's no, in other [25] words, it's, it's meaningless, the old report.

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- [1] If the information that's coming in has a material [2] impact, in other words, if someone says that the [3] estimate is 300,000, and they come in at 297,000, [4] nobody's going to change the report. Okay?
 [5] But if the report says 300,000, and the report, [6] I'm making a conversation again, if the report comes in [7] at 185,000, you can be it's going to change the report [8] because someone looking at it and saying, the [9] production individual's saying, okay, I have 3,000,000 [10] pieces of units I have to order. That's what the [11] primary purpose of this report is so that the [12] production person knows that first quarter, second [13] quarter, third quarter, and based upon lead times and [14] when things are going to be mailed or not mailed, [15] they'll know how to order it.
 [16] So, if it's off within a certain tolerance, I [17] don't know what that is, there would be no adjustment [18] made. If it's off markedly, and it would affect the [19] production schedule and the individual's performance, [20] then it would be adjusted, but it's, as a rule, it's [21] getting better, but it's still not the best.
 [22] Q Now--
 [23] A Does that clarify?
 [24] Q Yes, it does. Thank you. The, how long have the, are [25] the T & O Reports still in use today?

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- [1] A In a different, different format. They're much more, [2] they've been, I'm going to say that they're in use. [3] They're issued less frequently than they were, say, a [4] year ago when we, we started to use them a couple years [5] ago.
 [6] Q Is there a different format now?
 [7] A No. It's just a little bit more, it's a little bit [8] more concise, and it's, we've tried to eliminate, [9] again, a lot of the sales fluff and to make it a little [10] bit more meaningful for the management of the division [11] and for production to be able to do their job better so [12] that they don't go blow their brains out and buy excess [13] quantities.
 [14] Q How do you do that; how do you make it more meaningful; [15] what have you done to, to attempt that?
 [16] A Well, what's going to happen now is that the Os, when [17] it's an order, the order cannot be now entered on here [18] for quantity unless they've confirmed it with the [19] group, in terms of quantity, so it's no more what the [20] sales person says. It's what the group then confirms.
 [21] Q And how long has that system been in place?
 [22] A I would say it's been better in the last 12 months. By [23] the way, I'm answering that question based upon my [24] knowledge, okay, so I'm, I've, in other words, I see [25] the report. When I say "see the report," I'm only

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- [1] looking at it from one perspective, so that's how I see [2] it.
- [3] Q And how long have the T & O Reports been in existence [4] at Vantage?
- [5] A In the current format?
- [6] Q Well, not the—
- [7] A Or in any format?
- [8] Q Well, let's start with any format.
- [9] A I'd be guessing. I want to say, at least, for about [10] three years, we've done them, and maybe longer, three, [11] four years in a, in a format. I mean, when we first [12] started it, I would say it was very crude, but in the [13] current format or similar to that format, I would say [14] within the last couple of years. Three years, at [15] least, if not longer.
- [16] MR. BELL: Could we turn that air off? It's just [17] freezing—
- [18] MR. LEVITT: You can make it warmer over there. [19] You might press that button and see what happens. That [20] will make it warmer.
- [21] MR. BELL: Okay. Thanks.
- [22] MR. LEVITT: Sure. I turned it down when we got [23] in here.
- [24] MR. BELL: It's freezing over here.
- [25] BY MR. LEVITT:

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- [1] Q You said that, in 1996, your were, your involvement in [2] the Vantage Financial Services was limited?
- [3] A Yes.
- [4] Q Is that true also for the years preceding 1996?
- [5] A Well, I think I've testified before, my role was, [6] basically, advise and consent, try to help set [7] guidelines for financial integrity, try to help if the [8] individual that was heading up the division needed some [9] help or guidance or whatever.
- [10] Q Okay.
- [11] A But, generally, the, the answer would have been stay [12] out of it.
- [13] Q When did that start?
- [14] A Stay out of it?
- [15] Q Yes.
- [16] A Probably the day I walked into the company — no. I [17] would say probably, we finally had, I don't know. When [18] I said "stay out of it," that type of mentality, [19] probably 1994, 1995.
- [20] Q I'm going to ask you to take a look at this Handicap [21] Report again. This is Exhibit No. 27. If you could, [22] look at first quarter 1996, and under that, it says [23] Labels?
- [24] A Um-hum.
- [25] Q And there's a column that says Orders Mail Pieces; do

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- [1] you see that?
- [2] A Yup.
- [3] Q Okay. It says 226,781; what do you take that to mean?
- [4] A That we have orders in-house for 226,781, and it was [5] done on 06/12, my guess is that was what was mailed [6] out, but I don't know that.
- [7] Q And this is, this Handicap Report says it's for Fred [8] Chandler; do you see that?
- [9] A Yup.
- [10] Q The two columns over, it says Average Cost .43?
- [11] A Um-hum.
- [12] Q Do you know what that means, what that refers to?
- [13] MR. LeCLAIR: Objection.
- [14] A That's what I'm saying. I don't, I, I would never [15] have, I don't understand what average cost means. I'm [16] going to, I'm going to guess it should be estimated [17] cost. I don't want to guess.
- [18] Q Okay. You don't know what the term "average cost" [19] means?
- [20] A I know what average cost means, but you're not asking [21] me that. You're asking me what that means in the [22] context of this report.
- [23] Q Well, I mean, I'm asking you with your experience at [24] Vantage—
- [25] MR. LeCLAIR: Objection—

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- [1] BY MR. LEVITT:
- [2] Q —to look at —
- [3] MR. LEVITT: Let me finish the question, Brian.
- [4] BY MR. LEVITT:
- [5] Q —to look at this report. You said you weren't [6] involved in this division in 1996?
- [7] A Um-hum. I said I was involved in a limited capacity.
- [8] Q Okay. That you recognize a lot of the columns here as [9] being similar to the ones on the T & O Report. I'm [10] asking you, using your experience, to tell me what you [11] think that means?
- [12] MR. LeCLAIR: Objection. You're asking him to [13] guess and speculate. He's already testified he doesn't [14] know what it means on this document.
- [15] MR. LEVITT: I'm asking if you can think about [16] that and, and give me an answer.
- [17] A I don't know what it would mean.
- [18] Q Does the, does an average cost of 43 cents for a label, [19] is that a number that is consistent with your [20] understanding of the average cost of labels in 1996?
- [21] A I can't answer the question. I don't know if it would [22] or wouldn't be. Depending on the quantity, I can't [23] tell you.
- [24] Q Well, the quantity, if the quantity is 226,000—
- [25] A Um-hum—

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[1] Q -do you have an opinion as to whether 43 cents is [2] consistent with what you've seen as an average cost?

[3] MR. LeCLAIR: Objection.

[4] A I can't answer the question.

[5] Q Okay. Why can't you answer?

[6] A Because you're asking me to, to give an opinion on [7] something that you want me to guess, and I'm not going [8] to guess.

[9] Q Well, no, I'm not, I don't want you to guess.

[10] A Okay. I don't know what the cost would have been in [11] 1996 on 226,000 labels.

[12] Q Okay. This document shows - let me give you an [13] example here. Looking at the fourth quarter 1996 for [14] labels, there's a section that says Average Cost [15] 46Cents?

[16] A Um-hum.

[17] Q Actually, let me, let me strike that. Looking at the [18] holiday cards, there's a section that says Average [19] Cost, 57 Cents, Average Profit, \$1.18?

[20] A Um-hum.

[21] Q Do you see that?

[22] A I see it.

[23] Q That calculates to a profit margin of 200 percent. Is, [24] have you, is that consistent with any profit margins [25] you've seen at Vantage for holiday cards?

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[1] MR. LeCLAIR: Objection.

[2] A I don't know how you get 200 percent out of that.

[3] Q Well, if the average cost is 57 cents, and the average [4] profit is \$1.18-

[5] A Um-hum-

[6] Q -you take \$1.18 and divide by 57 cents, and it [7] calculates to 200 percent-

[8] A That's not-

[9] Q I've got a calculator if you'd like to take a look at [10] it.

[11] A I don't need a calculator. That's not a profit margin.

[12] Q Okay. What is, what's wrong with that calculation?

[13] A Profit margin is whatever the profit is over the [14] selling price divided by the selling price.

[15] Q Well-

[16] A You're referring to a mark up. That's not a profit [17] margin.

[18] Q Okay.

[19] A And I don't know if those numbers are right or not.

[20] Q Well, I understand that.

[21] A Okay.

[22] Q You don't know this document.

[23] A That's correct.

[24] Q And-

[25] A No, no, I don't know if those numbers are right. Go

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[1] ahead.

[2] Q I understand. Okay.

[3] A Um-hum.

[4] Q Well, let me ask it this way. As a profit mark up of [5] 200 percent-

[6] A Um-hum-

[7] Q -is that consistent with your understanding of profit [8] mark ups for holiday cards?

[9] A Based on your understanding of what the profit is, [10] profit against cost?

[11] Q Well, you said it was a profit mark up.

[12] A That's a profit mark up on cost, not the gross margin.

[13] Q Right.

[14] A Okay. And you're asking me, does that seem-

[15] Q Does that seem consistent with what you've seen at [16] Vantage?

[17] A It seems high.

[18] Q What, how high?

[19] (Pause.)

[20] What's your understanding as to what's a typical [21] profit mark up on-

[22] A On the cards-

[23] Q -holiday cards? Yes.

[24] A And your definition of "mark up"?

[25] Q Well, profit, yes, what we're talking about here,

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[1] profit mark up.

[2] A Okay. Which is profit over cost?

[3] Q Correct.

[4] A I would say that it would probably be, my understanding [5] it would be more in line with like 125 percent, under [6] the, under the methodology that you're, you're [7] proposing.

[8] Q Okay. Let's go back to the Contract Summary Combined. [9] When you looked at this-

[10] A Um-hum-

[11] Q -and made your determination as to whether Vantage [12] cost was recovered, what did you use for the, for [13] Vantage's profit in order to calculate that?

[14] A Profit as you define it or as-

[15] Q No, no. I'm asking you how you define it. I want to [16] get back to-

[17] A All right.

[18] Q I want to get to your terms.

[19] A I did, I told you that earlier. I used a basis of, [20] roughly, anywhere between a 35 percent to 45 percent, [21] in some cases probably as high as 50 percent, of profit [22] on revenue.

[23] Q You're going to have to bear with me here because-

[24] A No problem-

[25] Q -profit on revenue, is that, it is correct to call

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[1] that gross profit?
 [2] A That's correct.
 [3] Q And where did you come up with 35 to 50 percent as your [4] basis for doing this?
 [5] A Okay. I think we discussed that before, but I'll [6] repeat it again. It's that if you look at some of the [7] Response Analysis Reports and then look at the cost [8] summaries that are then put together to make that [9] program summary that we referred to earlier, we talked [10] about, where you extract the data from the two to come [11] up with a summation on a one-page Excel spreadsheet, [12] you would find that in band, an approximate band of [13] gross profits would be anywhere from 35 to 50 percent, [14] depending upon the quantity of the mailing and the [15] product.
 [16] Q Did you look at those documents in connection with [17] preparing this report?
 [18] A I testified earlier that I did not.
 [19] Q Okay. So, my question is--
 [20] A Oh, wait a minute. I'm sorry. Tell me which documents [21] you're referring to, please, so I can answer the [22] question correctly.
 [23] Q Okay. Well, you mentioned there was, I asked you how [24] you came up with this 35 to 50 percent gross profit as [25] your benchmark for producing the Vantage Contract

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[1] Summary Combined, and you listed several documents?
 [2] A That's correct.
 [3] Q My question is, Did you look at those documents when [4] you were preparing this Vantage Contract Summary [5] Combined?
 [6] A Now, I understand the question. Okay. I would have [7] referred to those con - those documents only from a [8] historical perspective, did not look at them, but knew [9] from my understanding that the band in the recent [10] couple years was in that band and that that was a [11] proper band of gross profit percentage to use.
 [12] Q Okay.
 [13] A Based upon my understanding of what transpired.
 [14] Q So, is it fair to say that you, being familiar with [15] those documents, you recollected within the last couple [16] of years that was a fair band, 35 to 50 percent?
 [17] A That's correct.
 [18] Q And then you used that band in order to produce, to do [19] this report?
 [20] A That is correct.
 [21] Q Now, what did you do for the programs that were [22] conducted prior to the last couple of years?
 [23] A Well, we know what the ones, we know what we did on the [24] ones where the payments were made in full. We got the [25] contract charges. You're talking where the payments

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[1] were less than the contract charges?
 [2] Q Sure.
 [3] A Okay.
 [4] Q Number one, number six, giving you some examples here, [5] number twelve, eighteen, twenty-one, twenty-two--
 [6] A Well, let's, let's, let's take a look at number [7] eighteen. If you collected, if you had paid 72,000 and [8] the costs were 73,000, I think it's pretty foredrawn [9] conclusion. In those cases, I would look at the [10] Response Analysis Report. Okay?
 [11] Q You did?
 [12] A No. You asked me something else. You asked me cost [13] sheets and summaries or you're asking if I looked at [14] any documentation?
 [15] Q I'm asking you what you did in order to answer the [16] column Vantage Costs Recovered for the programs that [17] were conducted outside of the last couple of years?
 [18] A I'm clear with the question now. Okay. In those [19] cases, I did refer to the Response Analysis Reports [20] that were matched up with the program numbers, looked [21] at the product, looked at the quantity of the product [22] and made, in my mind, a, I would say, a highly educated [23] understandable assumption as to what the profits were [24] on those items and then backed that profit out and the [25] postage out to determine what my profit would have

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[1] been, and that's how I determined it.
 [2] And when I had any issues, that's when I asked the [3] young ladies to check out some of the cost sheets, but [4] I did not do that personally, as I indicated earlier.
 [5] Q Other than with respect to Hofstra, have--
 [6] A Yeah--
 [7] Q --you asked these, the women referred to earlier, to [8] review anything on any other programs?
 [9] A I'd have to look.
 [10] Q Go ahead. Take your time.
 [11] (Pause.)
 [12] A I, I believe I recall two. One was Cryptic Masons [13] Research Foundation.
 [14] (Pause.)
 [15] Another would have been Parents Without Partners.
 [16] (Pause.)
 [17] That would have been pretty much it.
 [18] Q Was that it?
 [19] A Yeah. I don't, I don't recall any other ones. I, I, [20] I'm pretty certain I do recall Cryptic Masons and [21] Parents Without Partners.
 [22] Q Who did you talk to about Cryptic Masons?
 [23] A I don't know if it was either Kelly or Kim.
 [24] Q One of the two of them?
 [25] A Yes.

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- [1] Q And what did you ask them?
- [2] A I asked them if they could tell me what the costs were [3] on that job, on the Cryptic Masons, and whether, [4] whether the amount of money that we collected - I just [5] asked them what the costs were, and they gave me the [6] costs, and then they inserted, I think I inserted yes [7] in that one, and-
- [8] Q And-
- [9] A -on Parents Without Partners-
- [10] Q -I'm still on Cryptic-
- [11] A Go ahead.
- [12] Q And did they provide that to you in writing?
- [13] A No.
- [14] Q Provide it to you orally?
- [15] A Yeah. Basically, picked up the phone and said, can you [16] tell me if this is what the cost is?
- [17] Q And did they provide it to you right away, take them [18] some time?
- [19] A No. It took them some time.
- [20] Q And you don't recall who you talked to?
- [21] A I don't know if it was Kim or Kelly.
- [22] Q And what did they tell you the costs were?
- [23] A I don't remember the exact number.
- [24] MS. MINTZ: Peter, can we take a quick break?
- [25] MR. LEVITT: Yes. We can actually break for lunch

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- [1] if that's acceptable to everyone, come back here at [2] 1:00p.m.
- [3] (Whereupon, at 12:00 p.m., March 15, 2002, a [4] luncheon recess was taken.)

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- [1] AFTERNOON SESSION
- [2] (1:45 p.m.)
- [3] MR. LEVITT: Back on the record.
- [4] I'm just going to put this on the record, Brian. [5] I got handed to me during the lunch break a letter with [6] attachments from Mr. LeClair. The letter's dated [7] March 12, 2002, and there's FedEx pack that clearly [8] shows it should have been delivered on March 13th. It [9] was stamped received in the U.S. Attorney's office on [10] March 15th.
- [11] MR. LeCLAIR: Peter, just for the record-
- [12] MR. LEVITT: Sure-
- [13] MR. LeCLAIR: -I checked with FedEx. FedEx says [14] it was delivered on the 13th at 10:31 a.m. and signed [15] for.
- [16] MR. LEVITT: Okay. Did it say who it was signed [17] for by, by any chance?
- [18] MR. LeCLAIR: Yes. Paulson? I don't remember the [19] first name, but I can-
- [20] MR. LEVITT: Well-
- [21] MR. LeCLAIR: -get a copy.
- [22] MR. LEVITT: Well, no, that's, I mean, it's not [23] necessary. I'm, I will, I'm willing to assume that it [24] was in our, that the, that the problem was on our end.
- [25] (Pause.)

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- [1] FURTHER EXAMINATION BY MR. LEVITT:
- [2] Q Mr. Melikian, earlier today we were talking about the [3] difference between profit mark up and a gross profit [4] margin; do you recall that?
- [5] A Yes.
- [6] Q And you were trying to educate me on that difference, [7] and I'd like to go back to that, and if you could look [8] at the Handicap Report. Could you show me on that [9] report what you would look at, I guess, first, what [10] would you look at in order to determine gross profit [11] margin?
- [12] MR. LeCLAIR: Objection.
- [13] MR. LEVITT: And correct me if I'm saying the term [14] wrong. I want to use your term.
- [15] MR. LeCLAIR: Objection. There's been no [16] foundation that the witness would use this document for [17] that purpose.
- [18] MR. LEVITT: Okay.
- [19] The - oh, go ahead.
- [20] THE WITNESS: What, what did, tell me the question [21] you're asking-
- [22] MR. LEVITT: Well-
- [23] THE WITNESS: -so I can answer it properly.
- [24] MR. LEVITT: Okay. Okay.
- [25] BY MR. LEVITT:

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[1] Q All I'm trying to find out is what -- you've said that [2] you look at, when you were doing the summary reports, [3] that you looked at, you had your baseline gross profit [4] margin that you used which you said, I believe, was 35 [5] to 50 percent; is that correct?

[6] A Yes.

[7] Q Did you use that for all the years of the programs?

[8] A I don't remember if I used that for all the years. [9] That was a relevant range, and if there was some [10] closeness, if they were close, I'd then probably try to [11] go back to the Response Analysis Reports and look at [12] them.

[13] Q Okay. The, but in terms of your, in terms of your [14] formula, okay, did you use it regardless of what kind [15] of program it was, whether it was a label program or [16] holiday card; did you distinguish?

[17] A Yes.

[18] Q Okay. How did you distinguish?

[19] A Depending upon the volume and the type of program and, [20] in some cases, when the program was undertaken, the [21] margins would fluctuate with quantity, and the [22] percentage would fluctuate with quantity.

[23] Q Okay. Looking at the Vantage Contract Summary [24] Combined, which you should have in front of you, [25] Exhibit No 25, can you show me for which nonprofits you

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[1] used a different profit margin baseline other than 35 [2] to 50 percent?

[3] A I can't recall from, I mean, just doing it, looking at [4] this like this. I mean, I did this a while, this was a [5] while back.

[6] Q But when you did it, you did it based on simply your [7] recollection; isn't that correct?

[8] A Well--

[9] Q Other than, other than the instances where you had a, [10] where it was close--

[11] A Yes--

[12] Q --and you had a question.

[13] A So tell me your question again.

[14] Q Well, you've given, as your gross profit margin [15] baseline, what you think Vantage was receiving as its [16] gross profit margin on these programs--

[17] A Correct--

[18] Q --as 35 to 50 percent?

[19] A Okay.

[20] Q Okay. And you were clear that, about that for the last [21] few years.

[22] A Okay.

[23] Q And my question is, you know, these programs go back to [24] 1991, so I'd want to know what the gross profit margin [25] you used for other years or other, or different types

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[1] of programs?

[2] A I'll look at No. 97. You asked--

[3] Q Let me just say--

[4] A Sure--

[5] Q --you don't have to go through each one--

[6] A No. I'm just giving an example.

[7] Q Fine.

[8] A Okay? I'm looking at Sequence No. 97 because that [9] jumped out at me, U.S. Volleyball.

[10] Q Okay.

[11] A And it shows contract charges of 53,476 and program [12] receipts of 44,207. I would have gone back and looked [13] at the Response Analysis Report, determined if they [14] were labels, cards, calendars or whatever when they [15] were mailed and, to the best of my recollection, what [16] was a range of gross profit.

[17] Now, you're asking me did that extend over a [18] period of time? I'm going to say that I used that [19] maybe for the last five, six years, probably the profit [20] percentages, and the earlier years probably were [21] probably higher. Probably made more money earlier and [22] less percent of a profit as the years went on.

[23] Q Okay. So, you say last five or six years, you think 35 [24] to 50 percent is--

[25] A Yeah, I'm saying about last five years--

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[1] Q Okay--

[2] A --I think is a reasonable number.

[3] Q Okay. So, '96 back, let's say, do you have a different [4] baseline number you'd use?

[5] A I can't say for certain. I'm just, I'm saying that my [6] best recollection would have been that we would have [7] been having a, probably, a higher margin.

[8] Q Okay. Can you estimate it at all?

[9] A I would be purely guessing. I'm just saying it's, [10] probably the range is higher than the 35 to 50.

[11] Q How did you know what to use for these programs that [12] were earlier?

[13] A Well, more often than not, most of the programs that [14] were earlier were either at the number of contracts, at [15] the number of agreed contract charges or very close. I [16] mean, there wasn't, if it was close, then I went back [17] and tried to look at it.

[18] Q With respect to U.S. Volleyball--

[19] A Okay--

[20] Q --on this one, you said, you said, I think, something [21] to the effect of, I would have gone back and looked at [22] the response analysis and seen whether this was a [23] greeting card label program and how many were sent out; [24] is that--

[25] A No, that's not what I said.

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[1] Q Okay.

[2] A I said that's one where it was a few years back, and [3] based upon the numbers that I'm seeing, it was a pretty [4] safe assumption that it was, we would have definitely [5] covered our cost. I mean, I may have, I don't recall [6] specifically if I looked at that one or not.

[7] Q Okay.

[8] A But if, in other words, that one came out, I don't have [9] the exact percentage in my head, but I'm going to, it [10] looks like it's about 80 something plus percent. I'm [11] using the relationship between, I don't have the [12] percentages on my, on my schedule. I'm looking at 45 [13] over 53.

[14] Q And is that how you do gross profit margin?

[15] A No, no, no.

[16] Q Okay. Sorry.

[17] A No. I'm looking at the percentage of the payments to [18] the program contract charges, and then that number is [19] over 80 percent, and I said that earlier, that I was [20] looking at, you know, the cutoff or the, the curtain, [21] so to speak, would be in the 65 percent.

[22] So, if I saw then that they were under 65 [23] continuously, and it was a, it was a high end product, [24] I'd probably look at it.

[25] Q Okay. So you used 65 percent as your cutoff regardless

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[1] of what year it was?

[2] A As a, as a reasonable benchmark.

[3] Q Okay. And you did that regardless of whether it was a [4] label program, a holiday card--

[5] A In some cases, it would have been, it would have been [6] what I would refer to as a laydown because it would [7] have been a laydown.

[8] In other words, it would have been automatically, [9] we would have covered it because of the fact that on [10] labels, as a percentage of the charge to the customer, [11] that profit percentage would have been higher because [12] if you, for example, if you're making 40 cents or [13] 50cents on a label that's charged out at a dollar, [14] you're at the high end of the gross profit range. [15] Fifty over 100 is 50 percent.

[16] If you're making 85 cents on a calendar, and [17] that's at \$2, that's at 42 percent, so, and it's, [18] again, it's, it has a relationship as to what the [19] marketplace will bear.

[20] Q Right. Do you usually, you have a different gross [21] profit margin, for example, holiday cards than labels?

[22] A When you say "do you," do we expect a different gross [23] margin?

[24] Q Well, do you--

[25] A Or percentage--

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[1] Q --achieve? Your, the 35 to 50 percent gross profit [2] margin baseline--

[3] A Um-hum--

[4] Q --I took it that you were saying this is, it's what we [5] expect, but it's also historically what you think [6] you've achieved -- Vantage has achieved?

[7] A That's a correct statement.

[8] Q Based on your, that's your belief based on your [9] experience and knowledge. So, my question is, Do you [10] have a different expectation with respect to gross [11] profit margin on labels than holiday cards?

[12] A Yes.

[13] Q Okay. Can you tell me what the difference would be?

[14] A Okay. I think I just said it, but let me say it again. [15] You would have a different gross profit percentage [16] expectation where the unit charge to the customer, [17] depending upon competition and volume, was lower [18] vis-a-vis a compar -- a different product.

[19] So if a label was being billed to the customer at [20] 80 cents, let's say, and they were buying 500,000 [21] labels, we would charge them the 80 cents. Let's [22] assume that we would probably pay our costs, all our [23] costs, would be 35 cents. We'd have a 45 cents profit, [24] maybe 40 cents. That's, roughly, a 50 percent mark up. [25] Okay? A 50 percent gross margin.

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[1] On a card or a calendar, because the marketplace [2] would be very difficult, you'd probably have a calendar [3] that was probably, I'm making it up, a holiday [4] calendar, a year end calendar, at \$1.75 or \$1.65 on [5] which, if you didn't manufacture them properly, you [6] could end up paying as much as, it could cost you as [7] much as a buck in which case you'd make 65 over 165 [8] which is then only 40 percent.

[9] And depending upon how much you manufactured, when [10] you manufactured, in what quantity, the type of product [11] in the competition, the profit percentage would, could [12] vary considerably. I'm giving you a relevant range of [13] 35 to 50.

[14] Q Is it, is it fair to say that regardless of the type of [15] premium, being a label, holiday--

[16] A Yup--

[17] Q --card, your expectation would be that the gross profit [18] margin would still be in the 35 to 50 percent range?

[19] A Within a normal relevant range of our business, the [20] answer's yes, and that would be x'ing out what I would [21] call monsters. Let's say somebody bought 5,000,000 [22] labels. You would, obviously, take a considerably [23] lower gross margin percentage because your absolute [24] dollars would be higher.

[25] Q So, there might be situations where gross profit margin

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[1] would be higher than 50 percent or lower than [2] 35percent, but you're saying those, those are [3] outliers?

[4] A Yeah. Those are ones which are extreme situations, but [5] there would be those cases.

[6] Q Okay.

[7] A There could be those cases.

[8] Q Okay. And in addition, just to complete the circle, [9] you think that prior to '96, that the gross profit [10] margins, generally, I'm saying, across the board, you [11] think were higher than 35 to 40, 50 percent?

[12] A The range would have probably been, again, I'm, I'm, to [13] the best of my knowledge, the range would have been [14] probably more in line with 40 to maybe 60 percent.

[15] Q In order to determine gross profit margin, what do you [16] do?

[17] A You would take your sales revenue, subtract your cost [18] of sales and whatever's left is your gross profit, and [19] you divide your gross profit by your revenues.

[20] Q So it's -

[21] (Pause.)

[22] Looking at the Handicap Report-

[23] A Yup-

[24] Q -do you see on this Handicap Report-

[25] A Um-hum-

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[1] Q -a column that you recognize as representing gross [2] profit?

[3] A Yes.

[4] Q Which column is that?

[5] A For tentative, it would be fifth from the right, and [6] for orders, it would be fourth from the right.

[7] Q Can you, can you say what those column headings are?

[8] A Tentative Gross Margin-

[9] Q Yes-

[10] A -and Order Gross Margin.

[11] Q Okay. Do you see a column that you recognize as [12] representing revenues?

[13] A Yes.

[14] Q Okay. Can you identify that column by its heading?

[15] A It would say either Tentative Revenue or Order Revenue.

[16] Q Is it -

[17] (Pause.)

[18] Okay. That's fine.

[19] (Pause.)

[20] MR. LEVITT: What exhibit are we on, Jen.

[21] COURT REPORTER: Twenty-eight.

[22] MR. LEVITT: Okay.

[23] (The document referred to was [24] marked for identification as [25] Melikian Exhibit No. 28.)

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[1] MR. LEVITT: I'm going to show you a document that [2] has been marked as Exhibit 28. It is a Response [3] Analysis Report for American Truck Historical Society, [4] and the Bate Stamp on it is VA1203.

[5] BY MR. LEVITT:

[6] Q Take a moment to, to look at that if you would?

[7] (Pause for witness to review document.)

[8] BY MR. LEVITT:

[9] Q Do you recognize that document?

[10] A It's a Response Analysis Report.

[11] Q In the summaries that you provided, the Vantage Program [12] Contract Summary, the, part of the exercise there was [13] to determine whether Vantage recovered it's costs; is [14] that correct?

[15] A That was the purpose as I understood it; yes.

[16] MR. LEVITT: Okay. I want to go through - on [17] this Response Analysis Report, Exhibit 28, Section A is [18] Program Costs.

[19] BY MR. LEVITT:

[20] Q Do you see that?

[21] A Yes.

[22] MR. LEVITT: Okay. I apologize if the writing is [23] a little small.

[24] BY MR. LEVITT:

[25] Q The Program Costs that are listed there, would you read

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[1] those into the record, please?

[2] THE WITNESS: Do you want me to read it totally [3] across the line?

[4] MR. LEVITT: No, just straight down. Just the [5] description part.

[6] A Okay. Postage product mailing, postal sell - product [7] sell price, postage first reminder mailing, postage [8] second reminder mailing, setup sweeping PO Box, [9] sweeping PO Box fees, NCOA, permit fee, bank fee, mail [10] opening, processing fee.

[11] Q Okay. Am I, I correct that Vantage's gross profit [12] margin-

[13] A Um-hum.

[14] Q -is included solely in the product sell price?

[15] A Principally in the product sell price.

[16] Q Is it, also included somewhere else?

[17] A There is just a, an administrative fee, just a handling [18] fee on the bank fees in the processing. In other [19] words, we, we pay the actual to the bank.

[20] Then there is a processing fee that the bank [21] charges, which we then pass on, but we include above [22] the line and below line. So, it's, essentially, a [23] wash. I just figured I'd explain that to you.

[24] MR. LEVITT: Yes. Right.

[25] THE WITNESS: Sorry. Sorry.

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- [1] A We're charged a fee from the bank for processing the,
 [2] when I say, "we", the group is charged a fee from the [3]
 bank, but it's the, it's, it's a fee that the bank [4] charges, and a
 bank fee, deposit fee, mailing opening [5] and processing fee.
 [6] They then bill us, and that's the actual cost, and [7] then
 we turnaround and then charge back the group for [8] those
 fees.
 [9] Q Okay. But there is no profit built into those fees for [10]
 Vantage; is there?
 [11] A It's, there is a, when I say, "a profit", there is just [12] a
 handling fee in terms, it's not really a profit. [13] It's just an
 administrative fee.
 [14] Q So, with respect to those fees,-
 [15] A Um-hum.
 [16] MR. LEVITT: I'm trying to give an example.
 [17] BY MR. LEVITT:
 [18] Q Say, say those fees are \$100.00?
 [19] A Um-hum.
 [20] Q Are you saying that Vantage might tack on a-
 [21] A Service fee of maybe five bucks or something.
 [22] Q Okay. For your-
 [23] A For our handling of the transaction.
 [24] Q Is there any place else where that is done?
 [25] A No.

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- [1] Q So, other than that issue, is it correct to say that [2] the
 Vantage's profit margin is worked into the product [3] sell
 price?
 [4] A Yeah. I would say, 97 percent of it. Some high, high [5]
 percentage.
 [6] Q Okay. And what is the other part of the product sell [7]
 price? Is it, what is the-
 [8] MR. LEVITT: Maybe I can do it by example.
 [9] THE WITNESS: Um-hum.
 [10] BY MR. LEVITT:
 [11] Q If you have the product sell price as \$1.25,-
 [12] A Yes.
 [13] Q -does that mean \$1.25 per product?
 [14] A Per unit mailed.
 [15] Q Okay. The question I'm trying to get to is, is the [16]
 product the piece of mail or is it the label, the [17] calendar, the
 greeting card? Is it the whole-
 [18] A The product is the entire product package.
 [19] Q What might that, can you give me an example of what
 [20] that would entail?
 [21] A Yes. A product would be a outside envelope, which [22]
 would have a window so that the individual's name, in [23] the
 case of a label, would show through the label.
 [24] It would include, the inside components would be [25] a,
 a sheet of labels which has a written advice on the

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- [1] top so that the individual can circle the amount of [2] money
 they want to donate, and/or change any [3] information on the
 label.
 [4] There would be a, a letter from the organization [5]
 explaining the purpose of the mailing and what the [6]
 charitable activity that the fund raising effort is [7] going to be
 going toward, which is called an appeal [8] letter.
 [9] In a standard package, there would be a, an [10]
 envelope which would then, also, have a window, which [11]
 would then be for the individual to insert the top half [12]
 portion of the labels, to insert it into the package [13] and with
 their check. That's a standard package.
 [14] Q And the portion of the product sell price that is not [15]
 gross profit margin, could you tell me, in that [16] example, is it
 all of Vantage's costs that go into [17] putting together what
 you just described; including the [18] actual physical envelope,
 that sort of thing?
 [19] THE WITNESS: I think, I believe I understand your [20]
 question.
 [21] BY MR. LEVITT:
 [22] Q Printing, etcetera?
 [23] A Yes. The cost that would go in there are all the costs
 [24] of the production of the materials; plus, all the [25] handling
 of the materials, all the mailing services

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- [1] involved in the materials; plus, all the creative work [2] that
 goes into creating those materials.
 [3] Q Okay. When you said, "the mailing", does that mean [4]
 mail house fee?
 [5] A Yes.
 [6] Q Okay. And is that, that's a fee charged by the mail [7]
 house?
 [8] A That's correct.
 [9] Q And how do you then determine-
 [10] MR. LEVITT: I take it then you've got your costs, [11] and
 you know what they are.
 [12] BY MR. LEVITT:
 [13] Q How do you determine what the product sell price
 should [14] be?
 [15] A We use, generally, a price list, and we factor off the [16]
 range of gross profits that I told you about within [17] category,
 type of product, volume, season, so on and so [18] forth.
 [19] Q When you say, "price list", what, what do you mean?
 [20] A Well, in other words, let's say that a salesman would
 [21] go to a customer and, let's say that there would be a, [22]
 he wants to sell a customer, the customer wants 100,000 [23]
 labels, and it would be a holiday label.
 [24] If the label is a certain type of label, the, the [25] salesman
 knows that they can sell that label for 85, 90

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- [1] cents, and, and that's what the selling price would be.
 [2] Q And do you, but the sell price is part cost, part gross [3] profit margin?
 [4] A That's correct.
 [5] Q And who decides what the gross profit margin should be [6] on a particular product?
 [7] A Well, what's happened, what happens is that, basically,
 [8] Mr. Lewis will decide what profit, well, let me, let me [9] restate that.
 [10] He would decide what he would like to make on each [11] profit, on each unit of, of product shipped, but the [12] marketplace may not want, may not allow that profit to [13] be achieved. In many cases, sometimes it doesn't.
 [14] Q When you say, "it doesn't", does that mean--
 [15] MR. LEVITT: Well, let's strike that.
 [16] BY MR. LEVITT:
 [17] Q When you say that Mr. Lewis will decide what he wants [18] the profit margin to be, does that mean that becomes [19] the product sell price then, but then sometimes it's [20] not achieved at the end of the program; is that what [21] you mean--
 [22] A No.
 [23] Q --by that?
 [24] A No.
 [25] Q Okay.

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- [1] A Let's assume that you're going to go into a selling [2] season, and you're looking at labels, and for 50,000 -- [3] well, let's say that the minimum is 100,000. You'll [4] sell it for 90 cents. If it gets to 200,000, maybe 85 [5] cents.
 [6] That is a guideline for the salesperson to be able [7] to go out and quote a prospective customer as to what [8] we would sell them that for.
 [9] It might come back where the customer says, "Okay, [10] I'll pay that," or "No, I have to, I can only pay this [11] much of because of competition from our friends."
 [12] Q So,--
 [13] MR. LEVITT: I understand what you're saying.
 [14] BY MR. LEVITT:
 [15] Q So, so, what Mr. Lewis wants in terms of gross profit [16] margin may change in the negotiations with the party?
 [17] A That's correct.
 [18] Q Okay. Is there a standard gross profit margin that he, [19] typically, wants on these programs?
 [20] A That's what I'm saying. We, we try to work within a 35 [21] to 50 percent band.
 [22] Q And on this, again, turning your attention to Exhibit [23] 28,--
 [24] A Okay.
 [25] Q --on the program costs, at cumulative dollar section,--

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- [1] A Um-hum.
 [2] Q --where it says, "32,482.60", what is that?
 [3] A That is the cumulative amount of charge to the [4] nonprofit organization for the product, postage, and [5] any and all fees that they've agreed to.
 [6] Q Okay. So, that is what Vantage has spent on the [7] program and is charging to the nonprofit; is that [8] right?
 [9] A Not exactly.
 [10] Q Okay?
 [11] A It's spent and/or advanced. There is a difference.
 [12] Q Okay. Could you explain that to me?
 [13] A Yeah.
 [14] Q The postage is not considered to be a cost of the [15] program, and certain other expenses are not. The NCOA [16] is not considered to be a cost. In other words, any [17] items which are not theoretically marked up are not [18] considered to be a cost. They're basically charged to [19] a, a receivable account and not to a cost account.
 [20] The costs are, essentially, the costs to produce [21] the product, to get it into the mail, exclusive of the [22] postage. That's the real cost.
 [23] Q The product sell price?
 [24] A No. Yes. No, let me, let me--
 [25] Q Okay?

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- [1] A --unconfuse you.
 [2] If you look at the 32,000, that is the contracted [3] amount of charges that the group is obligated to pay [4] Vantage.
 [5] THE WITNESS: Is that clear?
 [6] MR. LEVITT: Sure.
 [7] A Then there would be another -- I'm just gonna do this [8] rough -- postage of, let's say, 4,500, 5,000; plus, [9] sweeping fees and so on and so forth.
 [10] Okay, and, let me do it the real easy way. You [11] take the 32, less the 22, and you're left with roughly [12] \$10,000.00 in other charges.
 [13] Q Um-hum?
 [14] THE WITNESS: Does that make sense?
 [15] A The 32 total--
 [16] MR. LEVITT: Yeah.
 [17] A --and the 22 is for the product.
 [18] Q Right?
 [19] A The 22 is what we recognize as product revenue.
 [20] Q Um-hum?
 [21] A The rest is essentially pass throughs, which we--
 [22] MR. LEVITT: Okay.
 [23] A --don't recognize as revenues.
 [24] Q Okay. But is it correct to say that this 32,482--
 [25] A Yes.

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VMAX(24)

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[1] Q -is money that Vantage has spent to get the program
 [2] going, and is now charging the nonprofit?
 [3] A Yeah. Costs spent. That's a better word. It's [4]
 expended either on its own behalf or on behalf of the [5]
 organization.
 [6] MR. LEVITT: I'm going to show you a document [7] here,
 which will be--
 [8] REPORTER: Twenty-nine.
 [9] MR. LEVITT: -Exhibit 29.
 [10] (The document referred to was [11] marked for
 identification as [12] Melikian Exhibit No. 29.)
 [13] MR. LEVITT: This is, this is the document that [14] was,
 that I received today, entitled, "Cost Query [15] Report
 Summary." Let me show you. It's marked as [16] Exhibit 29.
 [17] BY MR. LEVITT:
 [18] Q Do you recognize that document?
 [19] A Yeah.
 [20] Q What do you recognize it to be?
 [21] A It's a summary of payments to Vantage, contract
 charges [22] and extraction of costs from a query report or, I
 guess [23] we use the term ledger sheet or accounting query
 [24] before.
 [25] MR. LEVITT: Yeah. I think we called it a cost-

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[1] A Query or something.
 [2] Q The same document that we were referring to earlier?
 [3] A Essentially; correct.
 [4] Q Essentially or--
 [5] A Yeah, I mean, yeah, it's the same thing. It's just [6]
 formatted a little differently.
 [7] Q No, I meant the cost ledger?
 [8] A Yes. Yes, I'm sorry.
 [9] MR. LEVITT: Okay.
 [10] A Yeah, that's correct.
 [11] MR. LEVITT: I'll get to the ques - I do want to [12] get to
 the question of whether this is the same as the [13] Vantage
 Contract Summary combined, which I understand [14] it's not
 exactly.
 [15] BY MR. LEVITT:
 [16] Q Let me ask you this first, were you involved in [17]
 preparing the Cost Query Report Summary, Exhibit 29?
 [18] THE WITNESS: Was I involved?
 [19] A Yeah. I was involved, to some extent, in preparing it; [20]
 yes.
 [21] Q Okay. Who else was involved in preparing it?
 [22] A Mr. LeClair and Kelly. I'm not sure if Kim was or not.
 [23] Q Kelly Wade and--
 [24] A Yeah. I'm not sure if Kim was, but I'm pretty certain [25]
 Kelly was.

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[1] MR. LEVITT: Okay. Now, I take it from, I take it [2] that this
 Cost Query Report Summary does not include [3] all of the
 nonprofits and programs included in the [4] Vantage Contract
 Summary combined, which was Exhibit [5] 25.
 [6] BY MR. LEVITT:
 [7] Q Is that correct?
 [8] (Pause.)
 [9] A Yeah. I believe this was, I'm, I'm not sure. I [10] believe
 this was only the one that was involved where [11] it wasn't 100
 percent.
 [12] MR. LEVITT: Okay.
 [13] A That's how, that's who I'm reviewing the report.
 [14] THE WITNESS: Is that clear what I said?
 [15] MR. LEVITT: It is. I want to get to that because [16] it is,
 it's, I'm a lit - let me, I just want to make [17] sure. I think I know
 what's included here. I want to [18] make sure that it's all clear,
 because, let me just [19] read the coverletter from Mr. LeClair. I
 think it's [20] maybe different from what's stated here. I, I don't
 [21] care. I just want to get it clear.
 [22] This says, coverletter says, "Enclosed for the [23]
 deposition on Friday is a spreadsheet of Cost Query [24]
 Report data we relied upon to support the spreadsheet [25]
 used by Ms. Ernigh, and the Cost Query Reports for

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[1] Shriners Hospital and a few other programs not part of [2]
 the claim at the time the Cost Query Reports were [3] originally
 produced." [4] It's not clear to me.
 [5] (Pause.)
 [6] BY MR. LEVITT:
 [7] Q What's your understanding as to what is reflected on
 [8] this Cost Query Report?
 [9] THE WITNESS: This here?
 [10] MR. LEVITT: Yeah.
 [11] A These would be all the items that are on this Vantage
 [12] Contract Combined Summary,--
 [13] Q Yeah?
 [14] A -which were not 100 percent collected.
 [15] Q Okay. Where the agreed contract charge was not [16]
 recouped?
 [17] A No, I didn't say that.
 [18] MR. LEVITT: Okay.
 [19] A Where, where, if the amount of payments made to
 Vantage [20] were greater than \$1.00 less than the agreed
 contract [21] charge. Maybe that's what you're saying.
 [22] So, okay, so, where they were \$1.00 less and not [23] at
 100 percent. That's what's reflected on this [24] report.
 [25] Q Okay. So, this report, basically, excludes from the

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XMAX(25)

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- [1] Vant - the, the nonprofits reflected on the Vantage [2] Contract Summary Combined where, basically, it's [3] blacked out on the right hand column because Vantage [4] has, Vantage received it's agreed contract charges?
- [5] A See, I don't go back and check individual lines. That [6] was, that was-
- [7] Q That was the intent?
- [8] A That was the exercise.
- [9] MR. LEVITT: Okay.
- [10] A That's correct.
- [11] MR. LEVITT: Okay. Okay. And there are some [12] additional columns here that weren't on the Exhibit 25.
- [13] BY MR. LEVITT:
- [14] Q Why don't we just go through those?
- [15] The right hand column, Cost Report Bates Numbers-
- [16] A Okay.
- [17] Q -that seems self-explanatory?
- [18] A Right.
- [19] Q That is the Vantage Bates No. of a particular Cost [20] Report?
- [21] A That's what I understand; yes.
- [22] Q From where you got the information?
- [23] A That's correct.
- [24] Q Okay. Do you know-
- [25] MR. LEVITT: The Cost Query Report Summary that

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- [1] was provided to me came with attachments; okay, and the [2] coverletter says that it, "includes Cost Query [3] Reports," which we've been calling cost ledgers, "for [4] Shriners Hospital and a few other programs not part of [5] the claim at the time the Cost Query Reports were [6] originally produced."
- [7] BY MR. LEVITT:
- [8] Q Is that your understanding as to what the attachments [9] are?
- [10] A Yes.
- [11] Q Okay. And that was the intent, in any event, to [12] provide those, those that, Cost Query Reports only for [13] programs that weren't part of the damage calculation at [14] the time the original Exhibit 25 was prepared?
- [15] MR. LeCLAIR: At the time the original Cost Query [16] Reports were produced.
- [17] A Produced.
- [18] MR. LEVITT: Okay.
- [19] (Pause.)
- [20] BY MR. LEVITT:
- [21] Q Did you find what you need?
- [22] A Nah, the hell with it.
- [23] MR. LEVITT: I don't mind.
- [24] THE WITNESS: No, go ahead.
- [25] BY MR. LEVITT:

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- [1] Q The, is it correct to say then that, in this Cost [2] Report Bates No. column, where all the Bates Nos. are [3] listed for the Cost Reports from where the cost [4] information came, that those are not necessarily [5] included in the package that I received today?
- [6] (Pause.)
- [7] BY MR. LEVITT:
- [8] Q If you know?
- [9] A I don't, I don't know.
- [10] MR. LEVITT: Okay.
- [11] A I can't answer that question.
- [12] Q Let's go to the next column of the Cost Query Report?
- [13] A Okay.
- [14] A And let's take, Amateur Trap Shooting, under the Cost [15] Query Report, it says, "38,689.13"?
- [16] A Right.
- [17] Q Is that Vantage's out-of-pocket costs for that program?
- [18] A Exclusive of the postage, which we talked about. [19] Exclusive, in other words, this is the direct cost that [20] relate to the revenue, and, and it relates to that [21] because that's the-
- [22] THE WITNESS: If you have the ledger sheet, I can, [23] I can refer to it.
- [25] MR. LEVITT: Yeah. We're going to have to look at

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- [1] a different one.
- [2] BY MR. LEVITT:
- [3] Q Let's look at, let's look at Cryptic Masons?
- [4] THE WITNESS: What number are you at?
- [5] MR. LEVITT: It's 22. Sequence No. 22, in the [6] left hand column.
- [7] THE WITNESS: Okay.
- [8] MR. LEVITT: It's Cryptic Masons.
- [9] BY MR. LEVITT:
- [10] Q There the-
- [11] MR. LEVITT: Why don't I, why don't I give you the [12] Cost Ledger Report. This is a Cost Ledger Report that [13] was produced to me today. It's VA2003. It will be [14] Exhibit 30.
- [15] (The document referred to was [16] marked for identification as [17] Melikian Exhibit No. 30.)
- [18] MR. LEVITT: Thanks. So, we'll both be looking at [19] the same thing here.
- [20] BY MR. LEVITT:
- [21] Q And in order to identify these, I take it that where it [22] says, "Sub-ledger TY", on Exhibit 30, up at the-
- [23] MR. LEVITT: I'm sorry.
- [24] BY MR. LEVITT:
- [25] Q Exhibit 30-

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XMAX(26)

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[1] THE WITNESS: Um-hum. Okay.
 [2] BY MR. LEVITT:
 [3] Q -where it says, "Sub-ledger TY", and there is a "129"?
 [4] A Yeah.
 [5] Q Right there? That that--
 [6] A Um-hum.
 [7] Q -"129" refers to the Cryptic Masons Program Number,
 [8] which is "VS129" on the spreadsheet?
 [9] A Yes.
 [10] MR. LEVITT: Okay.
 [11] A I believe so. That's correct.
 [12] Q Okay. The Cost Query Report says, on the report [13]
 summary, Exhibit 29,-
 [14] A Um-hum.
 [15] Q It says, "\$26,779.85"?
 [16] A Um-hum.
 [17] Q Can you tell me what that represents?
 [18] (Pause.)
 [19] A Let's see, it looks like it represents printing of [20]
 materials, mailings, mail house charges, envelopes, [21]
 programming costs that related to the, to the list, [22] and, and
 anything that, if there was something that we [23] had out of
 our inventory. In other words, we buy [24] generic envelopes,
 and we'd just take them out of the [25] env - the inventory.

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[1] Q Okay. Anything else?
 [2] A That's all I can see. That should agree with the [3]
 26,779.
 [4] MR. LEVITT: Now, let me show you another [5]
 document, Exhibit 31. This is a Response Analysis for [6]
 Cryptic Masons. It's VA0812.
 [7] (The document referred to was [8] marked for
 identification as [9] Melikian Exhibit No. 31)
 [10] BY MR. LEVITT:
 [11] Q Okay. Now, this, do you recognize this document?
 [12] A It's a, what do you call it? Yeah, the Response [13]
 Analysis for this program, it looks like.
 [14] MR. LEVITT: Okay. And, in the upper left hand [15] corner,
 it says, "VS129".
 [16] BY MR. LEVITT:
 [17] Q Do you recognize that as the same program number?
 [18] A Yeah.
 [19] Q Okay. On the Program Cost, here, section, it says, [20]
 "72,603"?
 [21] A Um-hum.
 [22] Q Can you explain to me, maybe using the Response
 [23] Analysis, showing me what, what costs are excluded from
 [24] the Cost Query Report, which says, "26,779"?
 [25] (Pause.)

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[1] THE WITNESS: Let me see?
 [2] A It looks like the postage would be excluded.
 [3] Q Is that what you understand is typically excluded? You
 [4] mentioned that earlier?
 [5] A Yeah. That's what I, typically, understand is [6]
 excluded, but that's my understanding; that that would [7] be
 excluded because that's considered to be an advance, [8] not
 a cost.
 [9] Q Okay. What else?
 [10] A The only thing else on here is mail opening charges,
 [11] and I don't know if that's in here or not. I believe [12] that's
 an advance too because that's a direct charge [13] back to the
 group, but, again, I don't see that in [14] here. So, I would, I
 have to make an assumption. To [15] the best of my
 knowledge, it's a charge back to the [16] group.
 [17] Q Well, I mean, we've got the document here?
 [18] A Yeah.
 [19] Q These are--
 [20] THE WITNESS: Hang on. I have to look through the [21]
 detailed ledger.
 [22] MR. LEVITT: Take, take your time.
 [23] (Pause.)
 [24] A The mail, I believe the mail order charges are, also, [25]
 direct charge backs as an advance.

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[1] Q When you say, "mail order charges", what do--
 [2] A I mean, not "mail order charges". I mean, "mail [3]
 opening charges".
 [4] Q Okay. Now, is, what is that, mail opening charges? Is
 [5] that a charge, does someone do that?
 [6] A Yeah. They slit the envelopes open, and then take out
 [7] the checks, and the remittances, and key them in.
 [8] Q Okay. Who does that?
 [9] A It can be any one of several companies. Back then, it
 [10] was Boston Financial Data Services. Now, I think we [11]
 have someone down in Maryland, but it's, it's a, some [12]
 independent third party that does all that.
 [13] Q So, you contract that out?
 [14] A Yes.
 [15] Q Okay. And then you get a bill from them?
 [16] A Yes.
 [17] Q Okay. Now, do you pay that bill?
 [18] A Yeah. We pay it, and, just like, when, when we pay the
 [19] bill, we pay the bill, and it doesn't go into the [20] costs. It
 goes as, as an advance, and then that gets [21] paid back.
 [22] Q And then you tell, then you, okay.
 [23] What else do we have here? So,-
 [24] A That's it, it looks like.
 [25] Q -postage and mail opening--

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- [1] A Yeah.
 [2] Q -is excluded?
 [3] A Um-hum.
 [4] Q So, if we subtract mail opening charges and the postage [5] from \$72,000.00, we should end up with 26,000 roughly; [6] is that correct?
 [7] A No. No, no, no.
 [8] MR. LEVITT: Okay.
 [9] A You're subtracting the postage and the mail opening [10] from the 72, and you end up with 59,000.
 [11] Q Okay, and then how do we get from--
 [12] MR. LEVITT: I got it. Okay.
 [13] BY MR. LEVITT:
 [14] Q How do we get from 59,000 to 26,000?
 [15] A Okay. The 59 and, the 26,000 relates to the 59,000.
 [16] Q How does it relate?
 [17] A Well,--
 [18] Q Is, is it correct that the--
 [19] (Pause.)
 [20] THE WITNESS: Go ahead. You ask the question.
 [21] MR. LEVITT: Okay.
 [22] BY MR. LEVITT:
 [23] Q We've got a Response Analysis Report that says that the [24] program costs are 72,000, and that's what--
 [25] A No. That's not what it says.

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- [1] Q Well,--
 [2] A It says that that's how much the contract costs to the [3] organization.
 [4] Q Okay, and--
 [5] THE WITNESS: Okay?
 [6] BY MR. LEVITT:
 [7] Q The agreed contract charge--
 [8] A Yes.
 [9] Q -is 72,000?
 [10] A Correct.
 [11] MR. LEVITT: Okay. I was referring to the fact [12] that it's under "Program Costs" in--
 [13] THE WITNESS: Okay. Clear.
 [14] MR. LEVITT: -the Response Analysis Report.
 [15] BY MR. LEVITT:
 [16] Q So, there is the \$72,000.00 agreed contract charge?
 [17] A Yes.
 [18] Q And the, in telling the government what, what Vantage's [19] costs, what portion of that 72,000 related to Vantage's [20] cost, you've got in here 26,000 and change; is that [21] correct?
 [22] THE WITNESS: I'm--
 [23] MR. LEVITT: I'm looking at the Cost Query Report.
 [24] THE WITNESS: Yeah? Are you asking me if that's [25] the cost of this particular job?

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- [1] MR. LEVITT: Correct. Vantage's cost.
 [2] A Yeah. To the extent, again, to my, the best of my [3] knowledge, that's what the cost is per these sheets.
 [4] Q And that cost excludes postage and mail opening [5] charges?
 [6] A That's correct.
 [7] Q Okay. Which were paid by Vantage--
 [8] A Right.
 [9] Q -up front, and then--
 [10] A As an advance.
 [11] Q As an advance, and then--
 [12] A And--
 [13] Q -billed--
 [14] A -paid by the group.
 [15] Q Okay. If we subtract the postage and the mail opening [16] charges from the agreed contract charges, I don't know [17] this to be the case, but you said that that would equal [18] about 59,000?
 [19] A Yeah, just look at the line, it says that your cards, [20] that's your revenue.
 [21] Q Okay. And that, that section where it says, "cards", [22] that is, we referred to it on the Response Analysis [23] Report earlier, and it said, that was referred to as [24] the--
 [25] A Product sell price.

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- [1] Q Product sell price?
 [2] A Okay.
 [3] Q Is that, is that what that is?
 [4] A Yes.
 [5] Q The product sell price? Okay. So, the product sell [6] price is 58,000 and change, and 26,000 of that, and [7] change, represents Vantage's costs; is that correct?
 [8] (Pause.)
 [9] A The costs associated with that, Vantage's costs [10] associated with that 58,000 is the \$26,000.00 and [11] change.
 [12] Q Okay. And the remainder is the profit to Vantage?
 [13] A That's correct.
 [14] Q Okay. So, would it be fair to say that if we wanted to [15] determine Vantage's profit for each of these [16] programs,--
 [17] A Um-hum.
 [18] MR. LEVITT: Let me strike that.
 [19] BY MR. LEVITT:
 [20] Q On a Response Analysis Report, is there anything, other [21] than postage and mail opening charges, that Vantage [22] considers an advance and not a cost?
 [23] MR. LEVITT: I think you mentioned some things [24] earlier, but I want to be clear.
 [25] A Yeah. I mean, the NCOA, but it's a de minimis thing.

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VMAX(28)

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[1] It's like, it's peanuts. Then the postage, which [2] would, also, include the sweeping fee. So, that's [3] still considered postage. That's not, so, nothing [4] other than those items.

[5] Q But sweeping fees are considered postage?

[6] A Yes. If the, if, if the group does, actually, the [7] sweep, then it's considered part of the postage.

[8] MR. LEVITT: Okay.

[9] A Because there is no markup.

[10] Q The "sweeping" is what?

[11] THE WITNESS: The "sweeping", do you know what [12] that is?

[13] MR. LEVITT: I think I do, but--

[14] A Okay. It's where the, a group that's located in [15] Oklahoma, you're not going to ask their members to mail [16] their responses to a locked box in Boston or Florida. [17] You ask them to mail it to a locked box in Oklahoma [18] under the group's control.

[19] Then, on a predesignated basis, the Post Office [20] will sweep that mail into the group's designated [21] depository, wherever that may be; so, that the members [22] that are sending the money back, they're sending it [23] back to the group's designated PO Box in their [24] hometown.

[25] Q Okay. Is there anything else that should be excluded

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[1] from, that you, that Vantage considers an advance and [2] not a cost? Bank fee? Would a bank fee?

[3] A Yeah. Like I say, we charge a de minimis markup to [4] the, to the group, and, in some cases, we don't even [5] charge enough. So, what happens is that we charge the [6] group a certain amount per unit, and sometimes we make [7] a little money and sometimes we lose a little money on [8] the bank fees and the mail opening.

[9] On the permit fee, it's a straight pass through. [10] I'm referring back to American Truck Historical.

[11] MR. LEVITT: Me, too.

[12] A Okay. The permit fee is a straight pass through. [13] Sweeping fees are a straight pass through. To setup [14] the sweeping box is a straight pass through. Postage [15] is always a straight pass through, and I'm not sure we [16] do NCOA; that's something where they clean the list, a [17] list hygiene.

[18] MR. LEVITT: Okay.

[19] A I think we charge them a flat amount, and because we [20] give the Post Office, like, I don't know, 40 or 50 [21] million names a year, they get a, we get a discount.

[22] Q So, anything you, anything that Vantage doesn't markup [23] you consider an advance, and do not include it in this [24] Vantage Cost--

[25] A Cost Query, basically.

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[1] Q Yeah, the, the column on the Cost Query Report that [2] says, "Cost Query Report", that cost, for example, with [3] the Cryptic Masons, the 26,000,--

[4] A Um-hum.

[5] Q --only represents cost that Vantage marked up?

[6] A Yes. And the only, the only question I would have is, [7] this goes back, I guess, quite a few years. I don't [8] know when this document was done, in 1993.

[9] I would say that the, with a high degree of [10] certainty, that's the way it's done now, and the only, [11] the only exception I could think about is if there was [12] any extra services that they wanted us to perform, then [13] we would probably put it into the cost and add it into [14] the costs that they would have to pay.

[15] Q Okay. Now, but in the Agreed Contract Charges column--

[16] A Um-hum.

[17] Q --for Cryptic Masons, it says, "72,000"?

[18] A Right. That's what the contract calls for.

[19] Q Right. And that is the same as the 72,000 on the [20] Response Analysis Report?

[21] A Yeah.

[22] Q So, that, unlike the Cost Query Report column, does [23] include postage, mail opening charges, anything else [24] that is an advance?

[25] A Correct.

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[1] MR. LEVITT: Okay.

[2] A Because they're obligated to pay us; right.

[3] (Pause.)

[4] BY MR. LEVITT:

[5] Q This, this 72,000, well, 59, well--

[6] (Pause.)

[7] MR. LEVITT: I, here is what I don't understand. [8] Okay?

[9] BY MR. LEVITT:

[10] Q On the Cost Query Report, the 26,000, why didn't you [11] include the 72,000 minus your \$33,000.00 profit?

[12] A Okay.

[13] THE WITNESS: Want me to explain it?

[14] MR. LEVITT: Yeah.

[15] A The cost, on the Cost Query or account ledger inquiry, [16] whatever that, we're calling it, is the cost that [17] relate directly and only to the category that we refer [18] to as product sell price.

[19] MR. LEVITT: Right. Well, I understand that.

[20] THE WITNESS: Okay.

[21] MR. LEVITT: Yeah.

[22] THE WITNESS: So, I'm not sure I understand your [23] question then.

[24] BY MR. LEVITT:

[25] Q Well, I mean, the issue here is, I thought the purpose

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VMAA(29)

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[1] of these Cost, the Vantage Cost Summary Combined and,
 [2] now, the Cost Query Report Summary--
 [3] A Um-hum.
 [4] Q --was to show that Vantage, in X amount of cases, [5]
 Vantage recovered any money it had put into this [6] program
 up front; okay, and that, in those cases, yes, [7] Vantage might
 not have gotten its agreed contract [8] charges,--
 [9] A Um-hum.
 [10] Q --but the difference was only Vantage's profit, some [11]
 portion of--
 [12] A Some portion--
 [13] Q --Vantage's profit?
 [14] A --of profit; that's correct.
 [15] Q Okay. But, if that's case, why then didn't you, also, [16]
 include things like postage and mail opening charges [17] and
 NCOA charges, permit fees and bank fees, which [18] Vantage
 paid up front, because those, like Vantage's [19] other, like
 Vantage's costs, those expenditures are [20] money that
 Vantage put out there, spent?
 [21] A To answer your question, those aren't cost of sales. [22]
 Cost of sale, under accounting principles, okay, is a [23] cost
 that's related only directly to the revenue to be [24] recognized.
 [25] THE WITNESS: We're, we're clear on that? Let's

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[1] make sure we are.
 [2] MR. LEVITT: I believe, I, I don't know.
 [3] THE WITNESS: Okay.
 [4] A So, in terms of cost matching principle, under [5]
 accounting rules, the costs that are recorded as costs [6] of
 sales have to be directly related to the revenues, [7] which, in
 this case, is the 27, to be related to the [8] 58,561 or whatever
 the number is.
 [9] The additional incremental contract charges are [10] those
 that are contracted that the group agrees to [11] reimburse us,
 essentially, at no or minuscule [12] administrative charges, for
 our out-of-pocket costs.
 [13] We're not, we don't make any profit on that. So, [14] the,
 the revenue or the profit, per se, is determined [15] by 58 --
 whatever that number is, the 58 less 2 -- [16] less, let's keep it
 in round numbers. The 58 less 27 [17] is the, is the, what we
 would call our profit band.
 [18] Okay. It's revenue on product sale price, less [19] direct
 costs.
 [20] Q Right. I understand that your profit, in this [21] particular
 case, I think it's about 33,000, Cryptic [22] Masons?
 [23] A Yeah.
 [24] Q I mean, I did 59--
 [25] A The 59 less 27 is--

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[1] MR. LEVITT: Right.
 [2] A --32.
 [3] THE WITNESS: Go ahead?
 [4] MR. LEVITT: Okay. It's 32.
 [5] So, I understand that's the profit on this [6] program, but
 what I, and I, and I sort of understand [7] what you're talking
 about when you talk about [8] accounting principles, but--
 [9] THE WITNESS: Um-hum.
 [10] MR. LEVITT: --I didn't take this to be an [11] accounting
 exercise. I took this to be--
 [12] THE WITNESS: I'll give you--
 [13] MR. LEVITT: --Vantage--
 [14] THE WITNESS: --the economics of it.
 [15] MR. LEVITT: No, let me, let me finish.
 [16] THE WITNESS: Okay. Sorry.
 [17] MR. LEVITT: I just want to make sure that we're, [18] that
 we're reading this document in the same way in [19] terms of
 what it's designed to achieve.
 [20] I thought this document was designed to show that, [21]
 in X number of cases, Vantage recouped it's [22] out-of-pocket
 -- I don't know what word to use.
 [23] I'm going to use "expenses", but I'm going to [24] define it
 as everything Vantage has spent up front on a [25] program.

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[1] So, for example, in Cryptic Masons, that would [2] include
 the postage that Vantage paid up front,--
 [3] THE WITNESS: Um-hum.
 [4] MR. LEVITT: --the, the mail opening charges?
 [5] With respect to American Truck Historical Society, [6] it
 would, also, include things like sweeping PO Box [7] fees,
 setup sweeping PO Box fees, NCOA, permit fee, [8] bank fee,
 mail opening, and then the big ticket item [9] would be the
 portion of the product sell price that is [10] not profit.
 [11] THE WITNESS: Okay.
 [12] BY MR. LEVITT:
 [13] Q So, I thought the exercise was designed to show that
 [14] Vantage had recouped all of those -- I'll use the word [15]
 expenses--
 [16] A Um-hum.
 [17] Q --but not as an accounting term, but what I'm using for
 [18] that, that Vantage had recouped those, but I take it [19] that
 you're saying that that's not what this is [20] showing?
 [21] A These are--
 [22] MR. LeCLAIR: Objection.
 [23] A What this is showing is the costs, okay, that are [24]
 related to the revenues, okay, and if it is confusing, [25] I'll try to
 unconfuse you.

Vantage 20786

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XMAX(30)

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[1] These are the costs that relate to the revenues [2] that are going to be recognized in the program, which [3] then have a direct relationship to the amount of [4] payments that have been made by the group.

[5] MR. LEVITT: I understand what it shows.

[6] THE WITNESS: Okay.

[7] MR. LEVITT: I guess I just don't understand--

[8] BY MR. LEVITT:

[9] Q So, it does, it does not show where, where it says, [10] "Vantage costs recovered", and there is a yes or a [11] no,--

[12] A Um-hum.

[13] Q --that refers only to Vantage's costs associated with [14] the product sell price; is that--

[15] MR. LeCLAIR: Objection.

[16] BY MR. LEVITT:

[17] Q Is that correct?

[18] A No.

[19] Q Okay. What--

[20] MR. LeCLAIR: Peter, if you simply take those [21] other items--

[22] THE WITNESS: Let me do that. Okay?

[23] Peter, take the 12 or 13,000 dollars of other [24] items--

[25] MR. LEVITT: Um-hum.

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[1] THE WITNESS: --that are there--

[2] MR. LEVITT: Yeah.

[3] THE WITNESS: --and subtract it from the payments. [4] Do you see the 51,979, the payments?

[5] MR. LEVITT: Um-hum.

[6] THE WITNESS: Okay. And subtract the thirteen and [7] a half thousand dollars of non-product sale items?

[8] MR. LEVITT: Um-hum.

[9] THE WITNESS: Okay?

[10] MR. LEVITT: Yeah.

[11] THE WITNESS: That would bring that number down [12] to, I don't know, 39, 38,000 dollars?

[13] MR. LEVITT: Um-hum.

[14] THE WITNESS: And the 38 then has the relationship [15] to the 26, which would then bring you your pure profit [16] on the job.

[17] BY MR. LEVITT:

[18] Q Do that again?

[19] A Okay.

[20] Q Please?

[21] A No problem.

[22] Q And then tell me what the significance of that is?

[23] A Line No. 22--

[24] Q Yeah?

[25] A --the 5 -- let's use the round number of 52,000, and--

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[1] Q Yeah?

[2] A The portion of the program cost that's not revenue [3] related is approximately 14.

[4] Q Okay?

[5] A The 14 from 52 leaves 38.

[6] Q Right?

[7] A The 38 is your, is the remaining cash receipts payments [8] that would relate to the product sale portion of the [9] cost, and then that would be compared against the [10] 26,779.28 to determine your profit.

[11] So, in English, we're, basically, we're expecting [12] to make \$32,000.00 in--

[13] Q Profit?

[14] A --profit. We ended up making \$12,000.00 in profit.

[15] Q Um-hum?

[16] A But we still covered our costs. Even if you look at [17] your, when I say, the total costs, they were still [18] covered.

[19] Q Cost, cost; plus expenses?

[20] A Yeah, but you've got to be careful because--

[21] THE WITNESS: Okay, I understand what you're [22] saying, but, okay, you're talking about everything that [23] was expended out of pocket?

[24] MR. LEVITT: By Vantage.

[25] THE WITNESS: Right.

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[1] MR. LEVITT: Up front.

[2] THE WITNESS: Yes.

[3] A And that would still hold true.

[4] Q Okay. Does that hold true in every case where you've [5] got a "yes" here?

[6] A I believe it does.

[7] Q Do you know?

[8] A To the best of my knowledge, it does.

[9] Q And was, was, was, when it says, "yes",--

[10] A Um-hum.

[11] Q --is it referring to the recovery of Vantage's cost [12] plus, what we're referring to as expenses, all [13] out-of-pocket?

[14] A I believe, yes, I believe it does.

[15] Q So, when it says, "Vantage costs recovered", it is not [16] simply referring to the 26,779?

[17] A That's correct. Again, the logic is clear if you look [18] at the percentages that shows percentage paid.

[19] Q Why don't you explain that?

[20] A Well,--

[21] Q The 72 percent?

[22] A Yeah. I mean, you could, I mean, many of these are 82, [23] 92, 95, and you can see where they get down to 38s and

[24] 50s, they are mostly, "no."

[25] Q Right. But the, the 72 percent indicates--

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[1] THE WITNESS: Remember I told you that the cutoff [2] was the 65?

[3] MR. LEVITT: Right.

[4] THE WITNESS: And at the 72, you're seeing that it [5] is a "yes".

[6] BY MR. LEVITT:

[7] Q But that 72 percent, is that—

[8] A It's 72 percent of the contract charges.

[9] Q The 51,000 equals—

[10] A The 51, the 51 divided by the 72 is the 72 percent.

[11] Q Right. So, you got 72 percent of what you had agreed [12] to get?

[13] A To be paid; that's correct.

[14] THE WITNESS: Is that clear?

[15] MR. LEVITT: Yeah. Yeah. You know, I didn't take [16] a single math course in college?

[17] THE WITNESS: Neither did I, but I did all right. [18] Didn't I? I'm only kidding.

[19] MR. LEVITT: Yeah.

[20] BY MR. LEVITT:

[21] Q And just, the, so, if we were inclined to do so, we [22] could add another column here, to the right of Cost [23] Query Report—

[24] MR. LEVITT: Well, let me, let me restate that.

[25] BY MR. LEVITT:

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[1] Q Would it be an accurate, accurate from a, would it be [2] accurate if we added a column to the right of Cost [3] Query Report that said, "Additional Vantage up front [4] expenses" — if there is a better term for it that you [5] want to say, you know, if you want to say, "Vantage [6] advance expenses," — that we would then go to the [7] Cryptic Masons Response Analysis Report and we would [8] add 6,000 and change for the postage cards; the 3,000 [9] and change for the postage reminder; the one renew bulk [10] permit; pos — the 2,000 postage reminder; the mail [11] opening charges, took, I think you said was about [12] 13,000?

[13] A Right.

[14] THE WITNESS: Tell me what you want to do again?

[15] MR. LEVITT: Okay.

[16] If, what I wanted, what I would want to do is, and [17] I want to make sure that it's, it would be accurate [18] from your perspective, is add a column here to the [19] right of Cost Query Report.

[20] BY MR. LEVITT:

[21] Q What is, what's the term you use for these past through [22] charges, NCOA, permit fee, bank fee?

[23] A Those are, basically, reimbursable outlays.

[24] Q Okay. And we called it Vantage's reimbursable outlays, [25] that column, we could then go to a Response Analysis

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[1] Report and simply add up all those items that you've [2] identified; postage, sweeping fees, NCOA, permit fee, [3] bank fee, mail opening, processing fee?

[4] We could add those up and put them in that column?

[5] THE WITNESS: Are you asking me, what are you [6] asking me?

[7] BY MR. LEVITT:

[8] Q Well, would that be a, a, an accurate endeavor from [9] your perspective?

[10] MR. LEVITT: I'm not saying whether it's useful or [11] not.

[12] BY MR. LEVITT:

[13] Q I'm just saying, you know, using the term of Vantage [14] reimbursable outlays, you know, for this other that did [15] not get into this report, if I wanted to do that — I [16] guess the best way to say it — what, what would I put [17] in there?

[18] A Well, you would put in there like what we put in here [19] for the, the Cryptic Masons.

[20] You'd put in any, any outlay, reimbursable outlay [21] that's not a direct cost of sale.

[22] Q Okay. So, for Cryptic Masons that would be what?

[23] A That's the 13 or 14,000 that we talked about.

[24] Q In the Response Analysis Report?

[25] A Correct.

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[1] Q Okay. And that, just to be clear for the record, that [2] 13,000 is what? Postage?

[3] A Primarily postage. It's 90 percent, 95 percent of the, [4] 95 percent of the items are going to be postage.

[5] Q Postage, mail opening charges?

[6] A Mail opening charges.

[7] Q In a different case, like American Truck Historical [8] Society?

[9] A You might have a few other things, like a permit fee [10] and sweeping fees.

[11] Q Okay. NCOA?

[12] A Yes.

[13] Q Bank fee, mail opening?

[14] A Those are going to be small. The 95 percent of that [15] number is going to be postage.

[16] Q Okay. As a shorthand, is it fair to say that [17] everything on the Response Analysis under that Program [18] Cost that is not product sale price?

[19] A Generally, yes, but sometimes they may ask for other [20] services for which we do add a markup, and it's [21] considered revenue.

[22] Q Can you tell me what those are?

[23] A Yes.

[24] Q The ones you can remember?

[25] A Yes. I mean, it's happened recently, but not too

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[1] often, where we would sell the group a certain number [2] of pins, lapel pins, and that, they would ask us to, [3] they would ask us that, let's say that the group size [4] is 40,000. [5] They would ask us to print, manufacture 45,000. [6] The 40,000 would go to the members or donors, as a [7] gift, and then they would purchase the 5,000 extra pins [8] for their own use or, you know, to give them out as [9] they feel. [10] So, they were never mailed. They were just, [11] basically, given to them. [12] Q Anything else? [13] A The only other thing I can think about, but it's, [14] again, it's rare. I don't recall it happening in the [15] last few years, but it's, again, I've only seen it very [16] infrequently, and that's if they want something special [17] with their computer work, and it's, basically, their [18] files; so, what happens is that, what I, what I don't, [19] what we don't want to do is continue to just spend [20] money and then, on their behalf, when they ask us to do [21] computer models, so on and so forth, for their, their [22] profile of their, their donor, and then we give it to [23] them, and then we just, we just charge them. We just [24] add that into the, into the revenue mix, but there is a [25] direct cost, and that would be on the cost sheet.

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[1] Those two items would be on the cost sheet. [2] Q Okay. Those, those would be in the Program Costs? [3] A In the Program Costs, and on this Account Que - [4] Account Ledger Query. [5] Q Oh, they would be? [6] A Yeah. Because what's happening is they're not passed, [7] they're not pass throughs, they're not reimbursable [8] pass throughs. [9] MR. LEVITT: Okay. [10] A So, it, conceptually, that's my terminology. I think [11] it's a good terminology. If it's a reimbursable pass [12] through, it shouldn't be on here as a cost of sale. [13] Q Could you say what "here" is? [14] THE WITNESS: I'm sorry. [15] MR. LEVITT: That's okay. [16] A Here would be on the Account Ledger- [17] MR. LEVITT: Right. [18] A -Inquiry Sheet. [19] Q Okay. All right. Going back to the Cost Query Report [20] Summary and the Vantage Contract Summary Combined, [21] those two documents - Exhibit 29 and Exhibit 25, I [22] believe it is - when, let's look at the Vantage [23] Contract Summary Combined, Exhibit 25, and just look at [24] Amateur Trap Shooting as an example? [25] A Um-hum.

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[1] Q When you take a line item for a program, that first [2] program is VS106, and you say- [3] A Um-hum. [4] Q -payments to Vantage 36,000,- [5] A Um-hum. [6] Q -agreed contract charge is 58,000, that shortfall of [7] 22,000, does that get tacked onto the next program, [8] LM26- [9] A Five. [10] Q -5? [11] A It, they're obligated to pay whatever they owe us. [12] THE WITNESS: So, when you mean, "that shortfall", [13] I'm not sure what you mean by that. Could you tell me [14] what you mean? [15] BY MR. LEVITT: [16] Q Well, I mean, it says that your contract charges are [17] 58,000? [18] A Okay. [19] Q They paid you 36,000? [20] A Um-hum. [21] Q So, what happens to the 22,000? [22] A They still owe us the money. [23] Q Okay? [24] A And I can't recall, without looking at specific [25] documentation, what-

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[1] Q Well,- [2] A -the rela- [3] THE WITNESS: Are you asking a specific question [4] or- [5] MR. LEVITT: Let me, yeah. [6] THE WITNESS: -a general? [7] MR. LEVITT: Let me ask you a specific question. [8] BY MR. LEVITT: [9] Q If they paid that 22,000,- [10] A Um-hum. [11] Q -would it show up under this Payments to Vantage [12] column? [13] A Yes. [14] Q Now, the next, LM265 says, "Payments to Vantage, [15] 25,000"? [16] A Um-hum. [17] Q And the agreed contract charges were 21,000? [18] A Um-hum. Yes. [19] Q Why would the former be paid than the latter? [20] THE WITNESS: Why would they pay more? [21] MR. LEVITT: More than they agreed to pay. [22] A Again, because they're obligated to pay what they [23] didn't pay on the other program. [24] Q Okay. So, they owed you 22,000, and they get another [25] program, and, basically, they paid 4,000 of that?

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- [1] A Um-hum. That's correct. Yes.
 [2] Q Okay. And then there was \$18,000.00 leftover; correct?
 [3] A Yes. Some, approximately. That's correct.
 [4] Q Okay. If that \$18,000.00 was paid, would that appear [5] somewhere in the payments to Vantage column?
 [6] A Yes.
 [7] MR. LEVITT: Turn, on the Vantage Contract Summary [8] Combined to the second to the last page, and towards [9] the bottom of the page, there is a column that says, [10] "Shriners Hospital Combined".
 [11] BY MR. LEVITT:
 [12] Q Do you see that?
 [13] A Yes.
 [14] Q And it says there that the agreed contract charges were [15] twenty-four million, six hundred and twenty-five [16] thousand dollars and change?
 [17] A Yes.
 [18] Q And that the program receipts were twenty-three tho - [19] twenty-three million, eight hundred and thirty-four [20] thousand dollars and change; is that correct?
 [21] A Yes.
 [22] Q And Shriners has paid Vantage twenty million, six [23] hundred and sixteen thousand dollars and change; [24] correct?
 [25] A Yes.

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- [1] Q And how much does that mean that Shriners got to keep [2] of the program receipts?
 [3] A Well, I don't know what they got to keep, but so far [4] they haven't paid us roughly four million, the roughly [5] four million that they owe us, which they can pay at [6] anytime they want.
 [7] Q Okay. Well, the program receipts are twenty-three [8] million?
 [9] A Um-hum.
 [10] Q And they paid to you twenty million?
 [11] A Twenty-one million, but they paid, they paid, [12] basically, this, I mean, that schedule could be [13] outdated within a matter of two days.
 [14] Q Okay. Here is my question, just--
 [15] THE WITNESS: Go ahead?
 [16] BY MR. LEVITT:
 [17] Q Taking this as a snapshot,--
 [18] A Yes.
 [19] Q --okay, which I take it, it is?
 [20] A Yes.
 [21] Q The program has resulted in -- I'll roundup, [22] twenty-four million dollars in program receipts; okay?
 [23] A Yes.
 [24] Q And Shriners has paid to Vantage twenty-one million?
 [25] A Fair number.

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- [1] Q My question is, where is that three million at that [2] time?
 [3] A I'm not that familiar with the Shriners' contract. All [4] I know is that they, my understanding of the agreement [5] is that they're allowed, they have some kind of [6] obligation, I guess, that they have to withhold some [7] money as the program goes on, and they have to pay the [8] entire amount due at the end of the contract term, [9] which is, I believe is July 1 of 2003, and that the [10] contract is due and payable in full at that date, but I [11] think there is something, and, again, I don't know this [12] for a fact, but there is something in their bylaws, I [13] believe, that they have to retain a certain portion of [14] each payment, as the program goes along, that they keep [15] in, like, an escrow account. I don't know what it's [16] for, and then at the end of the program, which is, I [17] guess, another year away, all that then is paid to [18] Vantage, but they have an unconditional obligation to [19] pay the entire amount.
 [20] I don't know what the purpose of this set aside is [21] or not, but that's what I, that's what I understand it [22] is.
 [23] Q Okay. When you say that they have an "unconditional [24] obligation to pay the full amount", that's your [25] understanding of the contract?

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- [1] A Yes.
 [2] Q The, okay, so, you, you think the three million is [3] somewhere in escrow; is that--
 [4] A Yes. That's my understanding. That's my, that's what [5] I understand.
 [6] Q Okay. Do you know, on that agreed contract charges, [7] that twenty-four million, how much of that would [8] represent gross profit to Vantage?
 [9] A I'd be guessing.
 [10] Q Well, I thought you know that your typical gross profit [11] margin is 35 to 50 percent?
 [12] A This is a combination of three different types of [13] programs. It's acquisition, it's donor, and it's, it's [14] a membership program. So, it's acquisition, then [15] donor, and then go back and forth. So, it's, you would [16] have to look at each line item, but that's just, I [17] don't want to guess, but if it's 35 percent, you'd be [18] talking 35 percent of twenty-five million. It's [19] roughly eight million dollars.
 [20] MR. LEVITT: Well, I'm not asking you to guess. I [21] mean, I--
 [22] THE WITNESS: I, I'm not going to guess.
 [23] MR. LEVITT: Right.
 [24] THE WITNESS: I'm just saying that if it was at 35 [25] percent--

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- [1] MR. LEVITT: Well, I understand that, but—
 [2] THE WITNESS: Okay.
 [3] BY MR. LEVITT:
 [4] Q My, well, I mean, I thought that you've, and maybe it, [5] maybe it wasn't clear, but I thought that, basically, [6] you said that, certainly, today,—
 [7] A Um-hum.
 [8] Q —that your profit margin range is between 35, your [9] understanding is the gross profit margin ranges between [10] 35 and 50 percent regardless of what type of program it [11] is?
 [12] A Yeah. Within that range. That, that's a true [13] statement.
 [14] Q Okay. So, is it fair to say that the range of the [15] profit margin, with respect to this twenty-four [16] million, is between 35 percent and 50 percent, but you [17] just don't know where in that range?
 [18] A I, I would expect it to be in the lower band of that [19] range because of the enormous volume.
 [20] Q Turning to the second page of the, of Exhibit 25, [21] Advantage Contract Summary Combined sheet, Children's [22] Aid International?
 [23] A Um-hum.
 [24] Q Do you see that?
 [25] A Um-hum.

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- [1] Q The top line item says that Vantage's agreed contract [2] charges were ninety-one and a half thousand?
 [3] A Um.
 [4] Q Do you see that?
 [5] A I do.
 [6] Q And that the payments to Vantage were approximately [7] seventeen and a half thousand?
 [8] A Um-hum. Yes, they do.
 [9] Q And you put in there that it's your view that Vantage's [10] costs were not recovered; okay? Yes?
 [11] A That's correct.
 [12] Q And the next line is agreed contract charges, 16,000 [13] and change, and payments almost 9,000, 8,900?
 [14] A Um-hum.
 [15] MR. LEVITT: Again, you say, "Vantage's costs [16] recovered?" "No."
 [17] BY MR. LEVITT:
 [18] Q When you made that determination, were you adding [19] together the 91,000 and 16,000 on the right hand, and [20] the 17,000 and the 8,000 on the left hand, or were you [21] looking at the individual line item?
 [22] A I was looking indiv — because those are distinct [23] programs. They're both, they look like they're both [24] LV. I can't read what, yeah, it looks like they're [25] both LV programs.

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- [1] MR. LEVITT: Um-hum.
 [2] A They're distinct programs.
 [3] MR. LEVITT: Okay.
 [4] (Pause.)
 [5] BY MR. LEVITT:
 [6] Q Why wouldn't you be looking, since when we discussed [7] the Amateur Trap Shooting—
 [8] A Um-hum.
 [9] Q —and the 24,000 that was owed after the first, the [10] 22,000 that was owed after the first mailing—
 [11] A Yes.
 [12] Q —program; do you recall that?
 [13] A Yes.
 [14] Q And there was a second mailing?
 [15] A Yes.
 [16] Q Where the payments to Vantage exceeded the contract [17] charges by 4,000?
 [18] A Yes.
 [19] Q And you testified that that 4,000 went to reducing the [20] 22,000 that was owed on the previous program?
 [21] A Yes.
 [22] Q Okay. So, why isn't this treated the same way with [23] Children's Aid International, aggregating the programs [24] in terms of, you know, ultimately, how much of program [25] costs are, the agreed contract charges are being

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- [1] recouped, whether it's on Program 1 or Program 2?
 [2] A Let me explain. The first program was a, a disaster. [3] We only paid, were paid \$17,000.00. We then tried to, [4] I'm, I'm now, I don't know this specifically, but I'm [5] just, based upon my reading of the, of the, of the [6] summary, I don't specifically recall, but my, my [7] thought process would be that we went back to the [8] individuals who donated the first time on another [9] program, that's why it's called a D804,—
 [10] Q Um-hum?
 [11] A —and tried to do another program.
 [12] Each one stood on its own, but, as you can see, [13] the second program didn't even cover the second [14] program. So, there was nothing to apply to the first [15] program.
 [16] MR. LEVITT: And here is where the question comes [17] in from my perspective, with respect to the third [18] program.
 [19] THE WITNESS: Go ahead?
 [20] BY MR. LEVITT:
 [21] Q Now, you've got contract charges for 21,000, and you've [22] got payments to Vantage of 19,000. So, you say, yes, [23] our, Vantage's costs were recovered?
 [24] A Yes.
 [25] Q Do you see that? But in aggregate, on the three

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[1] programs, Vantage's agreed contract charges are, I'm [2] rounding down this time, 128,000--

[3] A Right.

[4] Q --and the payments are 44,000, which doesn't rise to [5] your 65 percent bench mark?

[6] A Okay.

[7] MR. LEVITT: So, I don't understand why you're [8] saying that Vantage's costs are recovered on any of [9] these programs.

[10] THE WITNESS: Do you want me to answer?

[11] MR. LEVITT: Yes.

[12] A Okay. These are three, essentially, stand alone [13] programs. I can't read it. It looks like it's LV515, [14] LV604 and LV659. Okay?

[15] The first program was undertaken, and, again, this [16] is to the best of my knowledge and recollection. The [17] second program was undertaken, and, again, from reading [18] what I'm seeing, the third program was undertaken, and [19] each program initially stands on its own, and if there [20] is incremental funds available, they're applied to the [21] next previous program.

[22] So, in my opinion, there is that, the Program No. [23] LV659 did cover its costs because it's a stand alone [24] program and not a continuation of any other program. [25] The other two programs did not.

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[1] Now, had the Program 3 generated \$150,000.00 in [2] donations, then it would have then gone back, a [3] priority back to the initial other programs, whichever [4] one of those covered it's costs, but each program [5] initially stands on its own.

[6] If it's, if it's a stand alone program and not a [7] connected program--

[8] Q So, you aggregate them if the final program is wildly [9] successful, and, as a consequence, recovers all the [10] unre -- previously unrecovered costs for the prior [11] programs; correct?

[12] A No. That's not what I said. Let me make sure that I'm [13] clear.

[14] Q Okay. The--

[15] THE WITNESS: Go ahead. You ask your question.

[16] MR. LEVITT: Okay.

[17] BY MR. LEVITT:

[18] Q If Program 3--

[19] A Yes.

[20] Q --was very, very successful,--

[21] A Yes.

[22] Q --let's say the payments to Vantage were \$200,000.00?

[23] A Clear.

[24] Q Would you then assign that money back to Programs 1 and [25] 2 and determine that Vantage's costs were recovered?

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[1] A To the extent that that was the agreement and [2] understanding between us and the group, the answer is [3] yes.

[4] Q Well, okay. What do you mean by "to the extent that [5] was"--

[6] A Well,--

[7] Q --"the agreement and understanding"?

[8] A Okay. I'm just, I'm just going to give you, not a [9] specific, but in concept, if the, if, the arrangement [10] was, in the first deal, we were short, I guess it looks [11] like \$74,000.00, and in the second deal, we were short [12] \$8,000.00, and the group is obligated to make up that [13] difference, then, on the third, the third go around, if [14] we had gotten excess money, it would be applied in [15] inverse order, current program, then most recent [16] program, so on and so forth, but if the programs are [17] not related--

[18] Q So, it might depend on whether there is a letter [19] saying, for example, "In the event of a shortfall"--

[20] A No.

[21] Q --"Vantage will continue"--

[22] A No. That's not what I said. No, I said that, no, [23] that's not what I said.

[24] The understanding is, with the groups, is that [25] they're obligated to pay, and they're obligated to pay

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[1] any balances that are unpaid. Okay?

[2] To the extent that the programs are unrelated -- [3] I'll give you an example, and I don't, I don't have a [4] specific example, but I'll give you an example.

[5] If Program 1, let's say, was done in 1996, 1995 -- [6] this is an example, but not a fact -- and another [7] program was done in 1998. The program that was done in [8] 1995, there might have been \$1,800.00 outstanding.

[9] At that point, we might make a concession to the [10] group to get another deal back later on. I'm not [11] saying that that happened, but that's an example where [12] they're not related.

[13] Q Can you tell temporarily whether these are related?

[14] THE WITNESS: Whether they're related?

[15] MR. LEVITT: Yeah. By looking at the year of the [16] mailings, '95, '96, '96.

[17] A It appears from looking at it, okay, it appears from [18] looking at it, that they're, they're related. It looks [19] like they're related insofar as probably the files, but [20] it's, it's a guess.

[21] Q Do you, do you have any doubt that if that second [22] mailing--

[23] A Yeah?

[24] Q --made \$50,000.00, that the excess over the \$16,000.00 [25] agreed contract charges on that mailing would be, go to

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[1] recover Vantage's costs for the first mailing where [2] Vantage was out approximately \$70,000.00?

[3] THE WITNESS: Do I have any doubt?

[4] MR. LEVITT: Yeah.

[5] A I mean, I don't, again, I don't know what the agreement [6] said. I would presume that there would be no question [7] that they should be doing that, that they would be [8] obligated to do that.

[9] Q And you're, after the first mailing Vantage is, you [10] know,--

[11] A Bleeding.

[12] Q Yeah, \$70,000.00?

[13] A Yeah.

[14] Q So, if you do another mailing, I take it, as a matter [15] of good business practice, that your goal is that that [16] second mailing is going to defray, if not recover [17] entirely, the deficiency from the first mailing?

[18] A Yeah. To be honest with you, I would have stopped [19] after the first one.

[20] Q Well,--

[21] A I'm just telling you. I'm just--

[22] MR. LEVITT: I understand.

[23] A That's where I'm getting--

[24] Q But, you know, this is--

[25] A But to the extent that we, to the extent that we did

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[1] it, to the extent that we did it, if we had, we, [2] obviously, again, not being part of the decision to do [3] it, we, obviously, must have believed, at that point in [4] time, that what we were doing would have generated [5] sufficient incremental proceeds to be able to chop into [6] the first piece or else we would have never done it. [7] It doesn't make any sense to just keep pouring good [8] money after bad.

[9] Q So, the question that I was trying to ask earlier was [10] that, if the third program, well, it seems to me that [11] you aggregate these programs with respect to whether [12] Vantage's costs were recovered if the costs of the [13] final program help defray those earlier deficiencies, [14] but that you separate them out, as is done here, with [15] this third program, if those, that last program does [16] not achieve the goal of recovering Vantage's costs on [17] prior mailings; is that, is that an accurate statement?

[18] A That's inaccurate.

[19] Q Okay. Can you explain to me why, because--

[20] A Okay.

[21] MR. LEVITT: Now, just, just so we're clear, I see [22] that, when I add these up,--

[23] THE WITNESS: Um-hum.

[24] MR. LEVITT: --the agreed contract charges for [25] these three programs is approximately 128,000, and the

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[1] payments to Vantage are 44,000; so, it does not appear [2] to me that Vantage's costs were recovered on any of [3] these program.

[4] Okay. So, that's, that's the sort of basis for [5] what I'm saying.

[6] BY MR. LEVITT:

[7] Q Do you understand?

[8] THE WITNESS: My turn?

[9] MR. LEVITT: Your turn.

[10] A In some cases, you have to look forward before you look [11] back. So, my answer to that question is, is that we're [12] not in the business to loose money. We're not in the [13] business to give away profit.

[14] So, whoever had made the decision to continue to [15] run these programs, as I said earlier, evidently [16] believed that there was an opportunity that we could [17] get some of our money back, or our loss in this case.

[18] It appears that the third donor mailing, which [19] came pretty close to the agreed contract charges, on [20] that program, alone, that, on, on its own, was a [21] successf -- was a successful program. Okay?

[22] It is obvious from looking at this, without going [23] into it more deeply in terms of looking at it, it, it's [24] obvious to me that the first two programs were not [25] successful.

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[1] So, Program 3, or the third iteration of a, of a [2] series of programs, appear to be successful, but it [3] didn't, we didn't get to the point that you're [4] referring to generating significant amounts of [5] incremental money to cover the first two; in which [6] case, we have to say, "Sayonara ."

[7] Q Okay. Are there any programs on this Vantage Contracts [8] Summary Combined, Exhibit 25, are there any, are there [9] any programs where you used payments from a second or [10] third program,--

[11] A Um-hum.

[12] Q --or third or fourth, for example, to aggregate back [13] and recover Vantage's costs on a previous program; such [14] that the Vantage costs recovered column changed from no [15] to yes for that earlier program? Were there any [16] programs like that here that you can recall?

[17] A I cannot recall specifically any of those cases. I [18] cannot. I can't say, you know, with any degree--

[19] Q Do you understand--

[20] A I'm very clear. In other words, did I take any [21] proceeds from a subsequent program, apply it to another [22] program, either previous or subsequent, to then be able [23] to demonstrate that the payments that were received [24] were over and above the agreed contract charges and [25] covered our costs. I'm clear what you said.

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[1] I can't specifically recall any instance in that [2] case.
 [3] Q Can you take a look at that Vantage Contract Summary
 [4] Combined,--
 [5] A Um-hum.
 [6] Q --and see if there is, if you look at the programs, [7]
 obviously, it would only be the programs where there is [8]
 more than one program; it would only be the situation [9]
 where there was more than one program for a particular [10]
 nonprofit--
 [11] A Okay.
 [12] Q --and it would have to say that the Vantage costs were
 [13] recovered, yes?
 [14] Can you see, can you take a look at that and see [15] if it
 refreshes your recollection as to whether that [16] may have
 happened?
 [17] Take a couple of minutes.
 [18] (Pause for witness to review document.)
 [19] A I can't say that by looking at it. I couldn't say it [20] just
 by looking at it. It doesn't, I mean, I can't, I [21] can't specifically
 say, "No", and I can't specifically [22] say, "Yes." It doesn't
 appear, from looking at it, [23] that there is any of those -- I
 don't know what you're, [24] how you want to characterize it --
 applications of [25] payments.

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[1] MR. LEVITT: Okay. Let me ask this question, [2] maybe
 this will help--
 [3] THE WITNESS: Okay.
 [4] MR. LEVITT: --resolve the issue.
 [5] BY MR. LEVITT:
 [6] Q The second page--
 [7] A The second page.
 [8] Q --look at the General Grand Chapter, Order of Eastern
 [9] Star--
 [10] A Um-hum.
 [11] Q --as an example?
 [12] A Um-hum.
 [13] Q Where it says, on that first line, "Program receipts, [14]
 333,037"; do you see that?
 [15] A Yes, I do.
 [16] Q Does that necessarily indicate program receipts from
 [17] that program only, and not from a subsequent program
 [18] that might have been used to cover the agreed contract
 [19] charges?
 [20] A I understand your question, and my understanding is
 [21] that it's, yes, that's just for that program.
 [22] Q Okay. And is it your understanding that that's the way
 [23] throughout this summary; that whenever a, is it your [24]
 understanding that throughout this Vantage Contract [25]
 Summary Combined and the Cost Query Report Summary, is

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[1] it your understanding that whenever there is a column [2]
 that says, "Program Receipts", and it is associated on [3] a line
 with a particular program, that that is solely [4] receipts from
 that particular program?
 [5] A Yes, it is. That's my understanding.
 [6] MR. LEVITT: Looking at that General Order of [7] Eastern
 Star, maybe it's easier to see, but it appears [8] there is two,
 there is two programs on a couple of [9] those line items.
 [10] It's difficult to read them, but we've got them as [11] -- for
 the record, actually, you can read them once you [12] see what
 they're suppose to be -- NB526, and there is a [13] slash,
 LS660.
 [14] THE WITNESS: Um-hum.
 [15] BY MR. LEVITT:
 [16] Q Do you see that?
 [17] A Yes.
 [18] MR. LeCLAIR: Which schedule are you on?
 [19] MR. LEVITT: I'm on the Vantage Contract Summary [20]
 Combined.
 [21] A Yes, I see it.
 [22] Q Why is it that you would have a situation where there
 [23] is two, two, why are two programs combined in that line
 [24] item?
 [25] (Pause.)

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[1] A I can't answer the question. I can't. I don't want to [2]
 make an assumption. Again, these were, these were [3]
 prepared by our staff. So, I, I would assume, I can't [4] make
 an assumption. I would assume that they're one [5] program, a
 continuation program, but I don't want to [6] make that
 statement without knowing.
 [7] MR. LeCLAIR: Just for the record, Peter, I think [8] in
 many cases there are a single program that are [9] tracked in
 multiple components. For example, donors [10] vs. members,
 but it's, in fact, the same program.
 [11] The group wants to be able to know how their [12]
 members contributed vs. nonmember donors.
 [13] THE WITNESS: Is that clear, Peter?
 [14] MR. LEVITT: Well, I mean, I really, well, let me [15] ask you
 this.
 [16] BY MR. LEVITT:
 [17] Q Does what Mr. LeClair has just said, does that refresh
 [18] your recollection at all in a way that you can answer [19] my
 question?
 [20] A Well,--
 [21] Q Without just, without just saying what he said, can--
 [22] A I'm clear. I'm clear. I mean, I can't say that that [23]
 refreshes my recollection on this, but there are [24] programs
 where there would be two or three different [25] codes, but it's
 the same program.

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- [1] It could be members, donors, lapsed donors, and [2] they would be combined into one program because, for [3] example, as we've said now for thousands of times, [4] sometimes a member mailing may not produce enough [5] receipts for the member portion of the mailing but it [6] would be offset by the donor portion of it, but the, [7] the group is considering it, we're considering it one [8] program, but we see it as components of the same [9] program; so that the group can understand how their [10] members are doing, how their donors are doing, so on [11] and so forth.
- [12] So, it's one pool of funds, but we track it [13] separately, and that's, that's a very frequent [14] occurrence, and we refer to those as breaking down by [15] cells.
- [16] Q Does the, do the initials "NB" or "LS" help us at all [17] on that?
- [18] A You know, I know, I know "N" means note cards, and "B" [19] may mean both. I don't know.
- [20] Q Well, I mean, just--
- [21] A I don't know. I don't know.
- [22] Q What is, do you know what "LS" is?
- [23] A No.
- [24] Q Do you know what--
- [25] A I know "L" is usually a label. I just--

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- [1] MR. LEVITT: Okay.
- [2] A I don't know what LS is.
- [3] Q What about "VS"? Any idea?
- [5] A No. Oh, it could be that, when we first started the [6] company, we were known as Vantage Studios.
- [7] Q Okay. "NM"?
- [8] THE WITNESS: I don't see that.
- [9] MR. LEVITT: It's on the top of the Order of [10] Eastern Star. I'm just picking them at random just [11] seeing if you know what these are.
- [12] BY MR. LEVITT:
- [13] Q "NM"?
- [14] A I'd be guessing. It could be new members. I don't [15] know. I don't know how these guys did their coding.
- [16] MR. LEVITT: Okay.
- [17] MR. LeCLAIR: Peter, is there anyway we can just [18] have a five minute break?
- [19] MR. LEVITT: Sure.
- [20] MR. LeCLAIR: Just to use the restroom?
- [21] MR. LEVITT: Yeah. We're, we're close to being [22] done here, but let's take a quick break.
- [23] (Whereupon, a brief recess was held.)
- [24] MR. LEVITT: Back on the record.
- [25] We'll mark Exhibit 32.

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- [1] (The document referred to was [2] marked for identification as [3] Melikian Exhibit No. 33)
- [4] MR. LEVITT: We're looking at the Response [5] Analysis for American Truck, it's Exhibit 28. That [6] response analysis, I represent to you, was produced to [7] the government as an exhibit or attachment to the [8] Combined Summary Report, Exhibit 25,--
- [9] THE WITNESS: Um-hum.
- [10] MR. LEVITT: --as the backup for it.
- [11] BY MR. LEVITT:
- [12] Q Do you recall that?
- [13] THE WITNESS: Okay. In other words, this was the [14] backup for this report?
- [15] MR. LEVITT: Well, yes, it was, it was provided in [16] a package--
- [17] A Okay.
- [18] MR. LEVITT: --to the government. The reports [19] were provided, and the response analysis were provided [20] along with them.
- [21] THE WITNESS: Okay.
- [22] MR. LEVITT: And that particular sheet is the [23] response analysis that was provided for American Truck [24] Historical Society.
- [25] THE WITNESS: Um-hum. Okay.

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- [1] BY MR. LEVITT:
- [2] Q Okay?
- [3] A Yeah.
- [4] Q Do you, who is responsible for obtaining those Response [5] Analysis Reports to provide as an attachment to these [6] summary reports?
- [7] THE WITNESS: What do you mean by "obtain"?
- [8] MR. LEVITT: Gathering them. However they were [9] obtained.
- [10] A Okay. I just asked the individual to printout the [11] Response Analysis Report for whatever the job number [12] was. In this case, it was 737.
- [13] Q Yeah?
- [14] A And they printed them out on 1/4, 2002.
- [15] Q Okay. Do you know who the individual was?
- [16] A It could have been Kim. It could have been Kelly. I'm [17] not sure who did it.
- [18] Q Okay. Now, this program, LM737,--
- [19] A Okay.
- [20] Q --is it, do you, can you tell looking at this Response [21] Analysis Report when this program ended?
- [22] THE WITNESS: When it ended? What does that mean?
- [23] "When it ended"?
- [24] MR. LEVITT: Well, when the program was complete.
- [25] A Well, generally, it looks like here that they were

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- [1] continuing getting donations as late as September 15th, [2] 1998.
- [3] Q Um-hum. Where do you see that?
- [4] A On the last page. I think it says, "September". I [5] can't read it that well.
- [6] Q Okay. Where it says--
- [7] A Nine, fifteen.
- [8] Q Yeah. This is in the revenue--
- [9] A Yeah, section.
- [10] Q --section, and the last date there is 9/18/98?
- [11] A Right. I would, again, my looking at this would say [12] that the program, essentially, ended, you know, for all [13] intents and purposes, I would say 90 days after the [14] second reminder mailing. So, at the second reminder [15] mailing, it looks like it's January 16th. I would [16] have--
- [17] Q January 16th of what year?
- [18] A Ninety-seven. I'd add probably 90 days and say, on the [19] outside, April 15th, 1997 you should have seen a [20] dramatic fall off in, in donations.
- [21] Q Okay. There were some donations, you know, dribbling [22] in--
- [23] A Oh, yes.
- [24] Q --up until--
- [25] A And sometimes they go on for years.

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- [1] Q Okay, but here, we don't have any after September 18, [2] '98?
- [3] A Well, as of January 4th, yeah, I mean, that was the [4] latest report that I have.
- [5] Q Okay.
- [6] A That was the latest donation that we showed.
- [7] Q Okay. Now, these are, these Response Analysis Reports [8] are all kept on a computer; is that correct?
- [9] A Yes. They are kept in some kind of file on a computer.
- [10] Q Okay. Is it, is it fair to say that they are a dynamic [11] document in the sense that they are con - they are, [12] while the program is going on, they're continually [13] being updated and changed as new mailings come in and [14] that sort of thing?
- [15] A Yeah, to the extent that if a, if a donation came in, [16] they would have to be updated, because the bank would [17] report a donation for a Program No. X, and that would [18] have to be updated.
- [19] Q And it's updated on the computer?
- [20] A Yeah. To my knowledge it is; yeah.
- [21] THE WITNESS: As opposed to what?
- [22] MR. LEVITT: I don't know.
- [23] BY MR. LEVITT:
- [24] Q I'm just wondering if the Response Analysis Report is, [25] itself, a document that is in the computer?

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- [1] A Yeah, and somebody would get the information from the [2] bank and enter in the data.
- [3] MR. LEVITT: Okay. That's, that's what I mean.
- [4] THE WITNESS: Okay.
- [5] BY MR. LEVITT:
- [6] Q Somebody would enter it into the computer?
- [7] A Yes.
- [8] Q Okay. Who is responsible for that typically?
- [9] A Currently, it's a fellow by the name of Jean Felix.
- [10] Q Jean Felix?
- [11] A Jean Felix.
- [12] Q Is that John?
- [13] A John Felix; yeah.
- [14] Q If a program, if there hasn't been a progr - if there [15] hasn't been any money coming in on the program, since [16] 9/18/98,--
- [17] A Um-hum.
- [18] Q --would there be any reason that there would be any [19] updating to the Response Analysis Report?
- [20] A Could be. Maybe, again, could be a charges that would [21] have come in afterwards that could have been charged [22] back to the group. Could be some payments. Could be, [23] they might have changed, you could change an address, a [24] contact number, a bank number. It doesn't just relate [25] to just receipts.

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- [1] MR. LEVITT: Okay.
- [2] A Anything that affects that program could change it.
- [3] Q And those changes would be reflected in the new, in the [4] Response Analysis Report?
- [5] A That's correct.
- [6] Q If there is--
- [7] MR. LEVITT: Let me show you Exhibit 32, which is [8] a Response Analysis also for American Truck Historical [9] Society.
- [10] BY MR. LEVITT:
- [11] Q I ask you to--
- [12] MR. LEVITT: And the date, in the upper right hand [13] corner of this one, is July 17, 2001.
- [14] THE WITNESS: Okay.
- [15] MR. LEVITT: And the Bates No. is VAN019948.
- [16] THE WITNESS: Um-hum.
- [17] MR. LEVITT: This Exhibit 32, if you compare it to [18] Exhibit 28,--
- [19] THE WITNESS: Okay.
- [20] MR. LEVITT: --I, I see there is only one [21] difference--
- [22] THE WITNESS: Okay.
- [23] MR. LEVITT: --between the two.
- [24] BY MR. LEVITT:
- [25] Q I welcome you to point out any differences you see?

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XMA(X40)

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[1] Why don't you go ahead, actually, and take a look at [2] the two?

[3] MR. LEVITT: You might have a better sense of [4] where to look at where changes might be made.

[5] (Pause for witness to review document.)

[6] A I see a reference to short fall on, on the 7/17 that I [7] don't see on the 1/4.

[8] Q Okay. Do you see any other changes?

[9] THE WITNESS: Let's see?

[10] (Pause for witness to review document.)

[11] A Thirty-two; thirty-two. Total number of donors have [12] changed.

[13] Q Where is that?

[14] A Under "D". It's gone from 1,740, no, number of days [15] outstanding. Excuse me. That's changed. The response [16] rate hasn't changed. The total number of days [17] outstanding has changed.

[18] Q What does that mean, that number there?

[19] A The date from the first mailing until the date the [20] report is printed.

[21] Q Okay. So, that's going to change automatically every [22] time you print it? Is, is that correct?

[23] A Yeah.

[24] Q That's going to change?

[25] A Yeah. I don't see anything else that's in front of me.

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[1] It looks like everything else looks the same. The [2] number of days in the mail. Okay.

[3] MR. LEVITT: Let, let me go back to the number of [4] days issue.

[5] THE WITNESS: Um-hum?

[6] BY MR. LEVITT:

[7] Q That happens automatically when you print it?

[8] A Yeah. It's printed, it should be the subtraction of [9] the date that the report is printed, and that date will [10] then subtract the date of the, the date of the reminder [11] to, which is a pure mathematical formula.

[12] Q Okay. Do you see any other changes?

[13] A It's a different Bate Stamp. Bank account, automatic [14] renews. I mean, I don't see it off the surface. The [15] only thing that sticks out is the shortfall section.

[16] Q Um-hum?

[17] A Product selling price, I mean, they look the same. [18] They look, well, they look reasonably identical.

[19] Q Reasonably?

[20] A Yeah, I mean, except for that one piece, I don't see [21] anything different, at least in the days, number of [22] days outstanding.

[23] Q Okay. So,--

[24] THE WITNESS: Am I missing something?

[25] MR. LEVITT: No, I'm just asking you.

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[1] THE WITNESS: Okay. I mean,--

[2] BY MR. LEVITT:

[3] Q I mean, the only changes you see are the number of [4] days, which happens automatically--

[5] A Um-hum.

[6] Q --when you print it?

[7] A Um-hum.

[8] Q And the section which says, "Shortfall. Continue [9] program until shortfall is eliminated"?

[10] A Yeah.

[11] Q On the July 17, 2001, that's present; on the January 4, [12] 2002, it is not?

[13] A Yeah.

[14] Q Okay. The program, under that "Miscellaneous [15] Information", it says, that the contract expired June [16] of '97?

[17] A Um-hum.

[18] Q The, we've already seen that the last piece of mail [19] that came in was 9/18/98?

[20] A Yeah.

[21] Q Why would that change be in there? Why would say, in [22] July of 2001,--

[23] A Yeah.

[24] Q --four years after the program contract expired, and [25] three years after the last piece of mail came in,--

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[1] A Yeah.

[2] Q --would it say, "Shortfall. Continue program until [3] shortfall is eliminated", and then six months later [4] would that not be in there?

[5] A I have no clue; unless it was a, again, there, there [6] are so many people working on these. There has [7] probably been 20 people probably handling this, and [8] when I say that, 20 people that would be using this. I [9] mean, before John Felix there was other people. I [10] wouldn't, I can't be honest and tell you that I know [11] who is doing what with the files. Okay?

[12] The point of matter is that whatever was on the [13] file on that day, it was printed, and whatever was on [14] the file this day was printed.

[15] So, I'm not sure what your question is. I'm--

[16] Q Okay. What I'm--

[17] A In other words, whatever, whatever, whatever was there [18] on the file that day is what was printed.

[19] Q Why would someone take out, "Shortfall. Continue [20] program until shortfall is eliminated"?

[21] A No clue.

[22] Q Why would someone even be in this when there is no [23] mailings after 1998?

[24] THE WITNESS: I don't understand your question.

[25] BY MR. LEVITT:

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VMAA(41)

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- [1] Q Why would someone be in the Response Analysis Report? [2] You say that a lot of people are in the report and [3] they're doing different things, but why would they be [4] in it-
- [5] THE WITNESS: You're asking me why that's not [6] there on July, January 4th, 2002?
- [7] A I can't answer it. I can't answer it. I mean, I don't [8] know. I don't know if something was run between July [9] 17th, 2001 and January 4th. I don't know if there was [10] or not.
- [11] Q If what was run?
- [12] A If there was another report run. I'm sure there [13] wasn't. I mean, this could be run at anytime, right, [14] and it shows that there was no change in any of the [15] numbers between the dates.
- [16] So, there was no, and if you ran it today, it [17] would say today's date on it, and it would update the [18] dates, and I'm, I don't know, I don't know if that [19] would printout or not. I don't know the answer to [20] that. I don't know why it's not there. I have no clue.
- [21] Q Do you have access to those Cost Analysis Reports?
- [22] THE WITNESS: Do I have access to them?
- [23] MR. LEVITT: Yeah.
- [24] BY MR. LEVITT:
- [25] Q On a computer system?

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- [1] A No. I would, if, somebody would have to take me in and [2] show me how to use them to get in there, but I have no [3] clue how to do them myself.
- [4] Q Who does?
- [5] A Well, people that would be entering data, or maybe [6] Kelly would. I'm sure Kelly would because she printed [7] these out, or Kim would.
- [8] Q What about the salespeople? Would the salesperson who [9] has the account for American Truck Historical Society [10] have access to the Response Analysis-
- [11] A I don't know the-
- [12] Q -computer?
- [13] A -answer to that. I do not know. I don't want to [14] guess with you and say that I do or don't, but I don't.
- [15] Q Who is, you may have said this earlier, but-
- [16] A Um-hum.
- [17] Q -who is, who, in the period between July, 2001 and, [18] and January, 2002, was, had overall responsibility for [19] the Response Analysis Reports?
- [20] MR. LEVITT: I'm not saying the person who was [21] inputting the data.
- [22] BY MR. LEVITT:
- [23] Q Whose department does it fall under? Who's the-
- [24] A I guess that would have to be under Kelly, Kelly Wade.
- [25] Q Okay. In accounting?

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- [1] A Yes.
- [2] Q When changes, when information comes in from the bank [3] that-
- [4] A Yeah.
- [5] Q -is relevant to the Response Analysis Report,-
- [6] A Yep.
- [7] Q -what is the process to make the changes to the [8] Response Analysis Report? Walk me through it?
- [9] A My understanding is they call up the report, and-
- [10] Q Who does?
- [11] A Jean, John Felix. He was, and he had a person before [12] her was, she was a screw up.
- [13] Q John Felix is a woman?
- [14] A No, it's a man.
- [15] MR. LEVITT: Okay. I see what you're saying.
- [16] A There was a person before him, though, that was a [17] woman, and she botched everything. Okay, her name was [18] Alicia something or other, but she had no clue, and [19] it's, it's possible she may have screwed those up. [20] Okay, I-
- [21] Q Okay. She might have gone in and taken out the-
- [22] A She, let me tell you something-
- [23] Q -shortfall-
- [24] A She had no clue what was going on. She, she screwed up [25] so many reports that we had to go back, but-

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- [1] MR. LEVITT: We talked about not guessing.
- [2] THE WITNESS: I'm not, I'm not going to guess. [3] Okay.
- [4] MR. LEVITT: Okay. Let's not.
- [5] THE WITNESS: She was grossly incompetent, but [6] that's beside the point.
- [7] A So, a report would come in from a bank, and it would [8] say, "Job No. 737." It wouldn't have a name to it. My [9] understanding is John would go look up in the 737.
- [10] The file would come up. It would say, "737". He [11] would put in the date that the receipt was recorded by [12] the bank. He would then log it in, and it would stay [13] on there.
- [14] If it's a program that's that old, you would not [15] run a, you would not run another, you would not [16] printout another report.
- [17] Then, what would happen is, because this is so [18] old, the job is so old, you wouldn't run a, you [19] wouldn't have to worry about a bank statement because [20] it's basically been closed out.
- [21] Q Do you know if the computer system has a fingerprint?
- [22] THE WITNESS: What's, I don't know what a [23] fingerprint is.
- [24] MR. LEVITT: A fingerprint is it can tell when it, [25] it identifies and marks on the computer when a person

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[1] has gone into it, into it; so, that if somebody goes [2] into a Response Analysis Report, there is a fingerprint [3] on the computer.

[4] A I don't know the answer.

[5] THE WITNESS: Like a, like a trail, you mean? [6] Like a, an identification?

[7] A I don't know.

[8] Q Is there a password to get into the computer system [9] where the Response Analysis Report is kept?

[10] A I, I, again, I don't know.

[11] Q Is the Response Analysis Report accessible, I take it [12] there is a computer database throughout—

[13] A Yes, that's correct.

[14] Q Is the Response Analysis Report, in theory, accessible [15] if you know how to do it—

[16] A Yes.

[17] Q —from anybody's computer in the, in Vantage, or is it [18] solely in the Accounting Department?

[19] A Again, I don't know the answer to that. I, I don't [20] want to guess.

[21] Q I mean, for example, you have a computer in your [22] office?

[23] A Yeah. There are certain files that I can't get into, [24] and certain files I can get into.

[25] Q Do you know whether if you called up Kelly Wade on the

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[1] phone and said, "Kelly, can you come down to my office? [2] I want to check out a Response Analysis Report," [3] whether she could show you how to get into it? Whether [4] it's physically able, you're able to do that?

[5] THE WITNESS: From my computer?

[6] MR. LEVITT: Yeah.

[7] A I don't know. I never asked her. I probably could. I [8] don't know. I can't, I'm not sure. I probably could, [9] but I'm not sure.

[10] Q Do you happen to know who the salesperson for American [11] Truck Historical Society is or was?

[12] A It says, "RL", and "RL" would have been Ron Lewis.

[13] Q He's no longer with the company?

[14] A No.

[15] Q When did he leave?

[16] A Well, he was there, evidently, to do this deal. I [17] would say, again, I'm guessing, but it would have to [18] be, you know, after, after January of 1997 because he [19] would have been there to do the deal. So, I don't—

[20] Q And do you know if he was still there in 2001?

[21] A Oh, no, no, no.

[22] MR. LEVITT: Okay.

[23] (Pause.)

[24] MR. LEVITT: Give me one minute, and I think we're [25] done.

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[1] (Pause.)

[2] THE WITNESS: Done?

[3] (Whereupon, on March 15th, 2002, at 4:01 p.m., the [4] above-entitled deposition was closed.)

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[1] C E R T I F I C A T E [2] COMMONWEALTH OF MASSACHUSETTS)

) SS. [3] COUNTY OF SUFFOLK)

[4] I, Jennifer Goguen, a Court Reporter and Notary [5] Public, within and for the Commonwealth of Massachusetts, do [6] hereby certify that there came before me on this 15th the [7] day of March, 2002, the person hereinbefore named, who was [8] by me duly sworn to tell the truth, the whole truth, and [9] nothing but the truth, concerning and touching the matter in [10] controversy in this cause; that he was thereupon examined [11] upon his oath, and his examination reduced to typewriting, [12] under my direction, and that this deposition transcript is a [13] true and accurate record of the testimony given by the [14] witness.

[15] I further certify that I am not related to any of [16] the parties hereto or their counsel, and that I am in no way [17] interested in the outcome of said cause.

[18] Dated at Boston, Massachusetts, this 2nd day of [19] April, 2002.

[21] Jennifer Goguen

[22] NOTARY PUBLIC

My Commission Expires:

[23] October 10, 2008

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XMAN(43)

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[1] CORRECTION SHEET [2] DEPOSITION OF HARRY
MELIKIAN, Vol III [3] PAGE NO. LINE NO. SUGGESTED
CORRECTION

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[1] SIGNATURE OF WITNESS:
[2] I have read the foregoing transcript and the same [3]
contains a true and accurate recording of my answers to the
[4] questions therein set forth, subject to the change and/or [5]
correction sheet(s) attached.

[8]

[9] Deponent

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Concordance by Lwjk Seer441

Look-See Concordance Report

 UNIQUE WORDS: 1,753
 TOTAL OCCURRENCES: 8,971
 NOISE WORDS: 385
 TOTAL WORDS IN FILE: 29,359

 SINGLE FILE CONCORDANCE

 CASE SENSITIVE

 NOISE WORD LIST(S): NOISE.NOI

 INCLUDES ALL TEXT OCCURRENCES

 IGNORES PURE NUMBERS

 WORD RANGES @ BOTTOM OF PAGE

 MAXIMUM TRACKED OCCURRENCE
 THRESHOLD: 200

 NUMBER OF WORDS SURPASSING
 OCCURRENCE THRESHOLD: 2

 LIST OF THRESHOLD WORDS:

LEVITT [276]

Okay [280]

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